

From: [Google Calendar](#) on behalf of [Melissa Beaumont](#)
To: andrea_travnicsek@ios.doi.gov
Subject: Accepted: CBRA Briefing @ Thu Nov 1, 2018 11am - 11:30am (EDT) (andrea_travnicsek@ios.doi.gov)
Attachments: [invite.ics](#)

Melissa Beaumont has accepted this invitation.

CBRA Briefing

When Thu Nov 1, 2018 11am – 11:30am Eastern Time - New York

Where Conference room - 3144 (map <<https://maps.google.com/maps?q=Conference+room+-+3144&hl=en>>)

Calendar andrea_travnicsek@ios.doi.gov

Who • andrea_travnicsek@ios.doi.gov - organizer

• tasha_l_robbins@ios.doi.gov - creator, optional

• gary_frazer@fws.gov

• martha_balisarsen@fws.gov

• jonathan_phinney@fws.gov

• dana_wright@fws.gov

• katie_niemi@fws.gov

• dominic_maione@ios.doi.gov

• benjamin.jesup@sol.doi.gov

• micah_chambers@ios.doi.gov

• taylor_pool@fws.gov

• melissa_beaumont@fws.gov

• roslyn_sellars@fws.gov - optional

• jim_kurth@fws.gov - optional

• ionie_spence@fws.gov - optional

• lois_wellman@fws.gov - optional

• stephen_guertin@fws.gov - optional

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

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<<https://support.google.com/calendar/answer/37135#forwarding>> .

From: [Google Calendar](#) on behalf of [Melissa Beaumont](#)
To: dlawler@usbr.gov
Subject: Accepted: CBRA Briefing @ Thu Nov 1, 2018 9am - 9:30am (MDT) (andrea_travnicek@ios.doi.gov)
Date: Thursday, November 1, 2018 10:00:30 AM

Melissa Beaumont has accepted this invitation.

CBRA Briefing

When Thu Nov 1, 2018 9am – 9:30am Mountain Time - Denver

Where Conference room - 3144 ([map](#))

Calendar andrea_travnicek@ios.doi.gov

Who

- andrea_travnicek@ios.doi.gov - organizer
- tasha_l_robbins@ios.doi.gov - creator, optional
- gary_frazer@fws.gov
- martha_balislarsen@fws.gov
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- dana_wright@fws.gov
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- micah_chambers@ios.doi.gov
- taylor_pool@fws.gov
- melissa_beaumont@fws.gov
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- ionie_spence@fws.gov - optional
- lois_wellman@fws.gov - optional
- stephen_guertin@fws.gov - optional

Invitation from [Google Calendar](#)

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From: andrea_trautnick@ios.doi.gov
To: katie_niem@fws.gov; gary_frazer@fws.gov; domin_c_ma_one@ios.doi.gov; dana_wright@fws.gov; martha_hallsjarsen@fws.gov; benjam_n_jesup@sol.doi.gov; jonathan_ph_nney@fws.gov; micah_chambers@ios.doi.gov; taylor_pool@fws.gov; melissa_beaumont@fws.gov
Cc: lois_wellman@fws.gov; roslyn_sellars@fws.gov; jonie_spence@fws.gov; stephen_guertin@fws.gov; jim_kurth@fws.gov; tasha_l_robbins@os.doi.gov
Subject: Invitat on: CBRA Briefing @ Thu Nov 1 2018 11am - 11:30am (EDT) (melissa_beaumont@fws.gov)
Attachments: [in file.ics](#)

more deta ls » <https://www.google.com/calendar/e.ent?action=VIEW&cid=Nm5fOXVlaWVjZDUyZnBzOHFmN3JzZWZmdmgbWVsaXNzYV9hZWF1bW9udEBmd3MuZ292&rs=1&tok=MjgYW5kcmVhX3RyYXZuaWNa0Bpb3MuZG9pLmd_dmnNkNWUSNz0MGFhNzNlMmQ_YzZlZDVhMDRlMWRlOWI3NzA0MTA0MQ&ctz=-America%2FNew_York&hl=en&es=1>
CBRA Br eefing
When Thu No 1 2018 11am - 11 30am Eastern Time - New York
Where Conference room - 31 (map <<https://maps.google.com/maps?q=Conference+room+-31&hl=en>>)
Calendar melissa_beaumont@fws.gov
Who » andrea_trautnick@ios.doi.gov - organizer
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• stephen_guertin@fws.gov - optional
• jim_kurth@fws.gov - optional
Going (melissa_beaumont@fws.gov) ? Yes <https://www.google.com/calendar/e.ent?action=RESPOND&cid=Nm5fOXVlaWVjZDUyZnBzOHFmN3JzZWZmdmgbWVsaXNzYV9hZWF1bW9udEBmd3MuZ292&rs=1&tok=MjgYW5kcmVhX3RyYXZuaWNa0Bpb3MuZG9pLmd_dmnNkNWUSNz0MGFhNzNlMmQ_YzZlZDVhMDRlMWRlOWI3NzA0MTA0MQ&ctz=-America%2FNew_York&hl=en&es=1>
• Maybe <https://www.google.com/calendar/e.ent?action=RESPOND&cid=Nm5fOXVlaWVjZDUyZnBzOHFmN3JzZWZmdmgbWVsaXNzYV9hZWF1bW9udEBmd3MuZ292&rs=1&tok=MjgYW5kcmVhX3RyYXZuaWNa0Bpb3MuZG9pLmd_dmnNkNWUSNz0MGFhNzNlMmQ_YzZlZDVhMDRlMWRlOWI3NzA0MTA0MQ&ctz=-America%2FNew_York&hl=en&es=1>
• No <https://www.google.com/calendar/e.ent?action=RESPOND&cid=Nm5fOXVlaWVjZDUyZnBzOHFmN3JzZWZmdmgbWVsaXNzYV9hZWF1bW9udEBmd3MuZ292&rs=1&tok=MjgYW5kcmVhX3RyYXZuaWNa0Bpb3MuZG9pLmd_dmnNkNWUSNz0MGFhNzNlMmQ_YzZlZDVhMDRlMWRlOWI3NzA0MTA0MQ&ctz=-America%2FNew_York&hl=en&es=1>
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Forward ng this in itat on could allow any recipient to mod fy your RSVP response. Learn More <<https://support.google.com/calendar/answer/37135#forwarding>> .

From: [Kodis, Martin](#)
To: [Matthew Huggler](#)
Cc: [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Rep. Van Drew (D-NJ) staff requests CBRA meeting / letter with D's office
Date: Tuesday, April 23, 2019 8:58:44 AM

Hi Matt and Melissa,

Rep. Van Drew is a new member from New Jersey and has a Coastal Barrier Resources Act issue in his district (certain interests want a change to the map of a unit). The staff has asked for a meeting with our CBRA folks to get a better understanding of the law, the process by which Congress has made changes to maps in the past, and background on their specific issue.

We'd like to set up the meeting but want to make sure Margaret is in the loop before we engage with OCL and FWP and then set up the meeting.

In a meeting, we'd cover the following:

- History of CBRA and broad information on how the law works
- Summary of the digital mapping effort that FWS has been implementing, at the direction of Congress, for the past 19 years.
- Summary of process for how changes have been enacted to maps (case by case and batches).
- Overview of Van Drew's specific issue, NJ-09. There is a response letter to Van Drew in DTS (DCN 069830) that has been with D since 4/9. Specifics on the issue are in the response, and if we get it cleared in time we can speak from the letter at a meeting with Van Drew's staff. It seems they have interest in changing NJ-09 from a full System unit to an Otherwise Protected Area (which has fewer restrictions on the use of federal funds, notably on beach nourishment, road and channels).

Here's the relevant information in the draft response:

"The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 re-affirmed that the area was appropriately included within the System Unit and found no new evidence indicating that it was "otherwise protected" at the time of designation in 1990. Furthermore, in 1982 the New Jersey Department of Environmental Protection urged the inclusion of the Stone Point Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters). As stated in the Federal Register notice for the project (83 FR 10739), if an area is dedicated to conservation and/or recreation after its initial inclusion within a System Unit, it is generally not reclassified to an OPA.

"The Service released draft revised boundaries for the first batch of CBRS units included in the Hurricane Sandy Remapping Project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We received comments regarding Unit NJ-09. We are currently conducting a public review of the draft revised boundaries for the second batch of the project. Following the close of the second public review period this month, we will make appropriate adjustments to the boundaries based on public comments, statutory development criteria, and objective mapping protocols. We will then prepare summaries of and responses to the comments received along with final recommended maps for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only

become effective once the final recommended maps are adopted into law by Congress.

"Your letter also noted that the Service had originally approved a Corps project within the unit, but in 2016 reversed its position. We'd like to clarify that the scope of the original project in the 1990s was significantly different from the project proposed in 2016."

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: [Beaumont, Melissa](#)
To: [Gary Frazer](#); [Gina Shultz](#)
Cc: [Tatiana Hendrix](#); [Martin Kodis](#); [Angela Gustavson](#)
Subject: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
Date: Friday, May 10, 2019 6:13:58 PM
Attachments: [background & informational memo template.docx](#)
[068399 Signed.pdf](#)
[Letter to Dir Sheehan on CBRA.PDF](#)

Hi Gary,

We received a request from OCL today for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). The issues they would like information on are general CBRA background, on the SOL opinion described the attached letters, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/> My apologies for the quick turnaround on this one.

Please let me know if you have any questions and thank you for your help!

Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

INFORMATION/BRIEFING MEMORANDUM FOR THE ACTING SECRETARY

DATE:

FROM:

SUBJECT:

KEY FACTS

[This section should have very topline figures or facts that give an “at a glance” summary of what is to be discussed]

Stakeholder Positions:

Public Lands Affected:

BACKGROUND

[Broad context, history, backstory etc. of the issue as well as pertinent facts and process status]

DISCUSSION

[More focused on actions being taken or set to be taken by the Department on the issue in question, as well as relevant laws, policies, and Department regulations that relate to the issue and how they may be impacted.]

NEXT STEPS

[Next steps in process for issue at hand such as progress of proposed regulation or Department action]



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



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

DEC 21 2018

The Honorable Garret Graves
House of Representatives
Washington, D.C. 20515

Dear Representative Graves:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



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

DEC 21 2018

The Honorable David Rouzer
House of Representatives
Washington, D.C. 20515

Dear Representative Rouzer:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

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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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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

Congress of the United States
Washington, DC 20515

June 20, 2018

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

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

Dear Acting Director Sheehan:

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

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

¹ S. Rep. No. 97-419, at 2.

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

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

Thank you for your consideration.

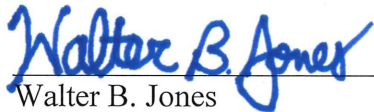
Respectfully,



Garret Graves
Member of Congress



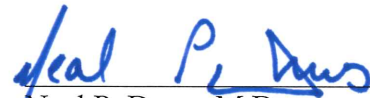
Doug Lamborn
Member of Congress



Walter B. Jones
Member of Congress



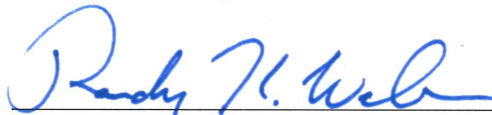
Frank A. LoBiondo
Member of Congress



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



David Rouzer
Member of Congress



Randy K. Weber
Member of Congress

Enclosures

QUESTIONS

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

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

From: [Kodis, Martin](#)
To: [Taylor Playforth](#)
Cc: [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Re: UPDATE / mtg with Congressman Garret Graves / request to broaden
Date: Tuesday, May 14, 2019 11:20:37 AM

OK great. Thank you Taylor!

Marty

On Tue, May 14, 2019 at 11:09 AM Taylor Playforth <taylor_playforth@ios.doi.gov> wrote:
I'm ok with those members attending if it's graves inviting them.

Sent from my iPhone

On May 14, 2019, at 11:05 AM, Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Taylor,

Any guidance on this? I need to get back with Rep. Graves' staff today if possible.

Thanks,

Marty

On Mon, May 13, 2019 at 12:04 PM Playforth, Taylor
<taylor_playforth@ios.doi.gov> wrote:

Let me check w/ Rouzer's office when I have some bandwidth later this afternoon.

On Mon, May 13, 2019 at 11:56 AM Kodis, Martin
<martin_kodis@fws.gov> wrote:

Hi Taylor,

We have a very brief 15 min courtesy visit set up with Mr. Graves on May 15, haven't yet set up a calendar invite.

Graves' staff called and asked whether Margaret would be ok using that time talking about the CBRA sand borrow issue and having Reps Rouzer and Van Drew attend. This seems a little odd to me for a 15 minute meeting. Graves' staff said it would be a chance for the members to state their thoughts on the issue, not an opportunity to have a full conversation about the matter.

Margaret asked me to run this by OCL. She's ok to do this but wants your thoughts first.

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

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

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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: melissa_beaumont@fws.gov
Cc: [Martha Balis Larsen](#); [Jonathan Phinney](#); [Dana Wright](#); [Gina Shultz](#); [Frazer, Gary](#); [Martin Kodis](#)
Subject: Re: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
Date: Tuesday, May 14, 2019 12:08:40 PM
Attachments: [Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx](#)
[Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Attachment 3 - Map of CBRS Units L07 L08 L09.pdf](#)
[Attachment 2 - 2018 Congressional Letters.pdf](#)

Hello Melissa,
Attached is the info memo (and related attachments) for the Secretary's meeting with Rep. Rouzer. Please let me know if you need additional information.

Thanks!
Katie

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

On Mon, May 13, 2019 at 7:31 AM Frazer, Gary <gary_frazer@fws.gov> wrote:
See below. Due to Melissa by noon Tuesday. I will be on travel, so do not worry about running it by me. Besides, you've done a variation of this several times already. -- GDF

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

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Fri, May 10, 2019 at 6:13 PM
Subject: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
To: Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>
Cc: Tatiana Hendrix <tatiana_hendrix@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>

Hi Gary,

We received a request from OCL today for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). The issues they would like information on are general CBRA background, on the SOL opinion described the attached letters, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/> My apologies for the quick turnaround on this one.

Please let me know if you have any questions and thank you for your help!

Melissa

--

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

Office: 202-208-4545

Desk: 202-208-4299

INFORMATION/BRIEFING MEMORANDUM FOR THE SECRETARY

DATE: May 14, 2019

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

SUBJECT: Coastal Barrier Resources Act (CBRA) issues in Representative Rouzer's district (NC-7)

KEY FACTS

The Coastal Barrier Resources System (CBRS) was established by CBRA in 1982 and consists of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The units are delineated on a series of maps maintained by the U.S. Fish and Wildlife Service (Service). With a few minor exceptions, only Congress can revise the CBRS maps. The purposes of CBRA are to minimize the loss of human life, wasteful Federal expenditures, and damage to natural resources on coastal barriers by prohibiting most new Federal expenditures within the CBRS. The law does not prohibit development conducted with private, state, or local funds; rather, it restricts Federal subsidies that may promote development within these hazard-prone and ecologically-sensitive areas. CBRA restricts new Federal expenditures within System Units of the CBRS for most projects to prevent the erosion of or to otherwise stabilize any inlet, shoreline, or inshore area (16 U.S.C. 3504(a)(3)). However, Federal agencies, after consultation with the Service, may make expenditures within the CBRS for activities that meet one of CBRA's exceptions (16 U.S.C. 3505).

In its consultations with other agencies since the mid-1990s, the Service has applied a consistent legal interpretation that most Federally funded sand mining *within* the CBRS for shoreline-stabilization projects *outside* of the CBRS is prohibited. This interpretation affects U.S. Army Corps of Engineers (Corps) shore-protection projects in a few areas along the Atlantic Coast (Stone Harbor, NJ; Topsail Beach, NC; Wrightsville Beach, NC; Carolina Beach, NC; and Folly Beach, SC), where communities seek to use areas within the CBRS as borrow sites for beach-nourishment projects for developed areas outside of the CBRS. The use of nearshore borrow sites is often preferable to offshore borrow sites due to sand quality and cost.

Stakeholder Positions: Local communities (including some in Rep. Rouzer's district) seek to invoke an exception under CBRA so sand mining for beach-nourishment projects can proceed with Federal funds. In 2016, a community in NJ filed suit against the Corps and the Service for violation of the Administrative Procedure Act, alleging an arbitrary and capricious interpretation of CBRA in a project consultation that resulted in Federal funds being denied for sand mining within Hereford Inlet. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing. Our understanding is that some communities in NJ are considering pursuing additional litigation.

Conversely, several organizations (e.g., American Littoral Society, Association of State Floodplain Managers, National Audubon Society, National Wildlife Federation, and Natural Resources Defense Council) oppose Federally funded sand mining within the CBRS. Some of the concerns from these groups include: disruption of natural sand movement and sand supplies; impacts on benthic habitat, fisheries, and shorebird habitat; and adaptability of islands to sea-level rise.

BACKGROUND

The legislative history is clear that CBRA is intended to reduce Federal involvement in activities that are detrimental to coastal barrier ecosystems within the CBRS, including most dredging and flood-control projects. House Report 97-841 Part 1 states:

Intense development and human use of coastal barriers have also caused diminished productivity in these important natural resource areas. Disposing sewage effluents, dredging canals and

channels, filling wetlands, leveling dunes, clearing vegetation, constructing hurricane and erosion control projects, stabilizing inlets, and other activities often spell trouble for the coastal barrier ecosystems that protect and often sustain natural resources of immense aesthetic and economic value The intent of the legislation is that all forms of direct Federal assistance for projects ... be precluded.

CBRA is a free-market approach to conservation that tackles a national problem with less Federal involvement rather than more. It helps the Federal Government send appropriate price signals to indicate that the risk of developing on coastal barriers is high and ensures that the Federal taxpayer does not underwrite further development in those areas, all without infringing upon the rights of landowners to develop their properties. It does not ban shoreline stabilization or sand-mining activities; they can still occur within the CBRS provided that the cost is covered by private, state, or local sources. As stated in President Reagan's 1982 signing statement, CBRA "will stop the flow of Federal dollars that have helped to encourage development that otherwise would not be economical. The difficult task of balancing competing uses of resources is best performed by the market, free of Federal subsidies."

In 1994, the Solicitor's Office Branch of Fish and Wildlife advised the Service that CBRA's exceptions apply only to projects that occur *within* the CBRS; they do not apply to projects that occur *outside* of the CBRS (regardless of whether the project may be consistent with the purposes of CBRA). A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks and the Solicitor's Office in 1995 reaffirmed this interpretation of CBRA. See Attachment 1 for related correspondence.

The Service received a letter in June 2018 from seven members of Congress, including Representative Rouzer, asserting that the agency has taken an unreasonably narrow interpretation of CBRA's exceptions, specifically as they pertain to congressionally-authorized shoreline-stabilization projects. The Service's December 2018 response letter stated that "this interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice [in 2000 and 2006] without regard to this interpretation of the law. Accordingly, the Service currently has no plans to revisit this interpretation." See Attachment 2 for the incoming letter and the Service's response.

In recent weeks, the Service participated in discussions with the Corps' South Atlantic Division and Wilmington District concerning the application of CBRA to projects with potential borrow sites in the CBRS in southeastern NC that are nearing the end of their Congressional authorization and/or their spending caps. (see Attachment 3 for map of the affected areas).

DISCUSSION

The Service does not have enforcement authority over CBRA; each affected agency is independently responsible for complying with the law. CBRA does not prohibit private, state, or local funding. State and local funding has been used to cover project costs within the CBRS in FL and NJ and is currently proposed for a storm-damage-reduction project in TX. However, given escalating costs, local communities and other interested parties continue to seek a path forward to allow sand mining within the CBRS using Federal funds.

NEXT STEPS

It is Congress's prerogative to amend CBRA to allow Federally funded sand mining within the CBRS for beach nourishment outside of the CBRS. The prohibitions and exceptions have not been amended since the 1990 CBRA reauthorization.

Attachments

FWS.CW.0380

Memorandum

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

From: Charles P. Raynor
Assistant Solicitor
Fish and Wildlife

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

Introduction

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

Background

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

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

.

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

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

purposes may receive Federal funding.

Discussion

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

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

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

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

Conclusion

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

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

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



United States Department of the Interior

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

JUN 12 1995

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

Dear Dr. Zirschky:

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

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

Dr. John H. Zirschky

2

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

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

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

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

Dr. John H. Zirschky

3

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

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

Sincerely,

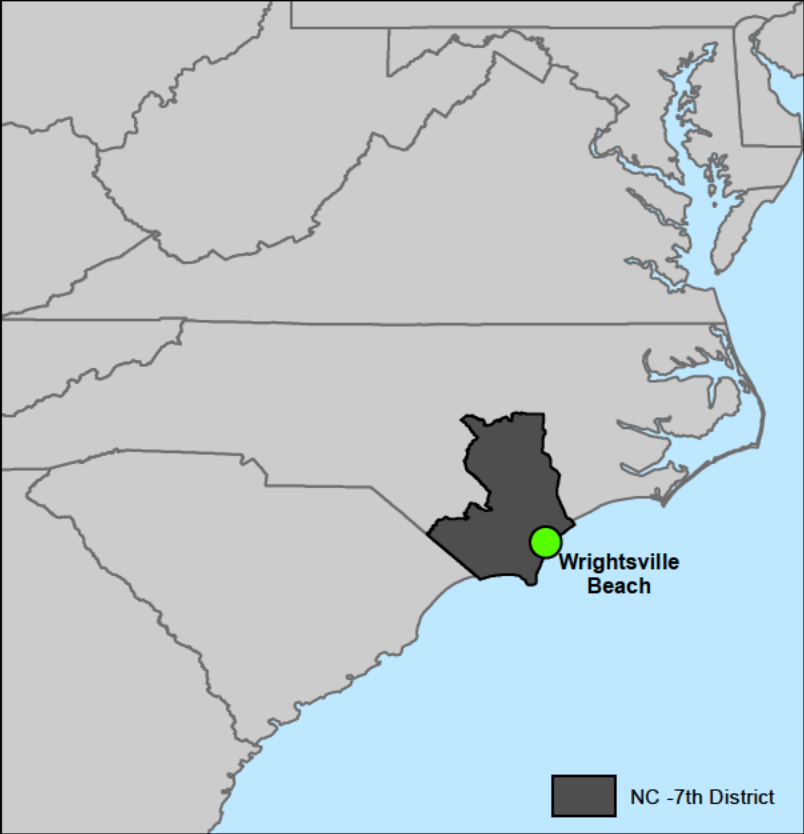
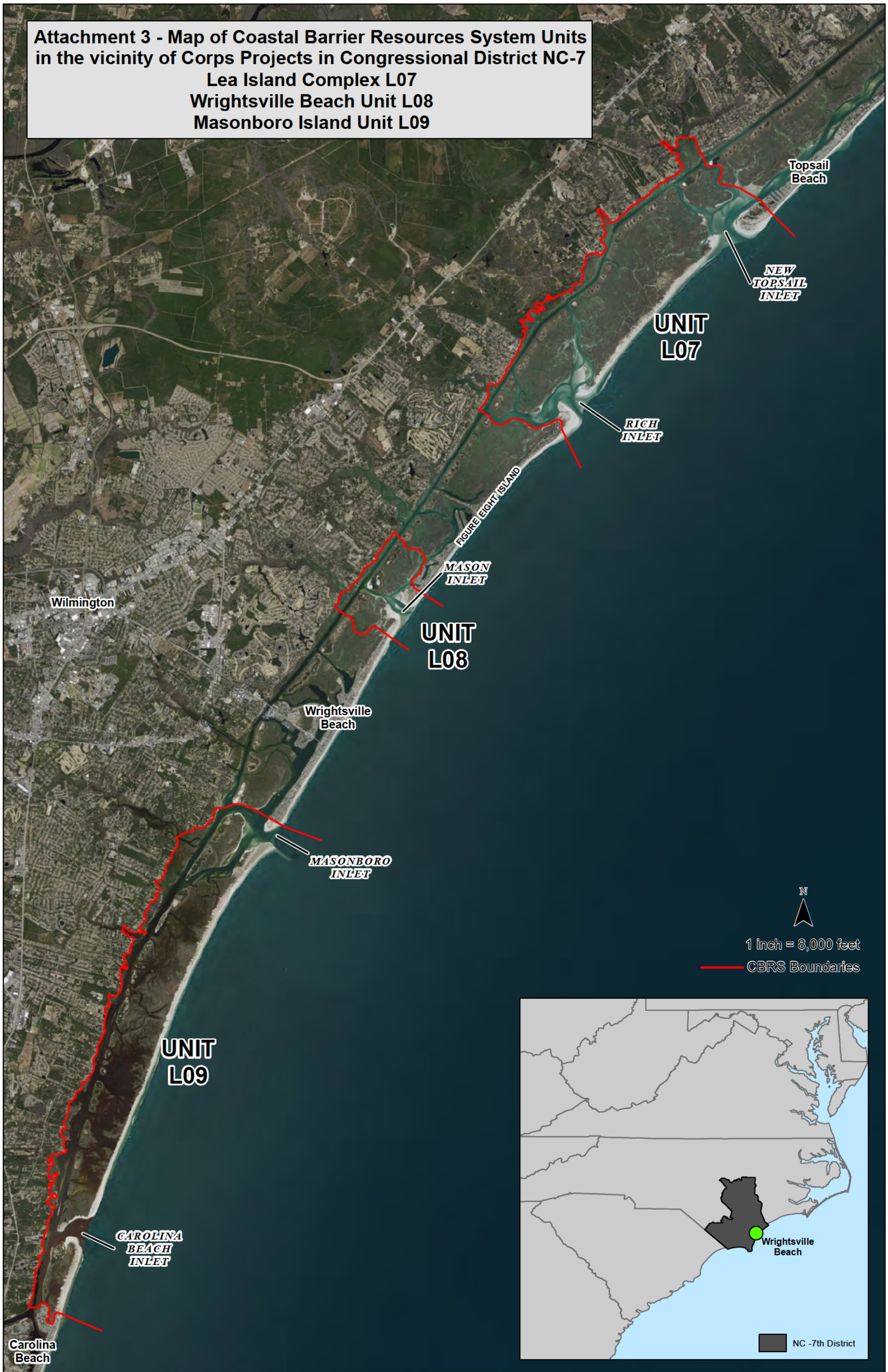
/s/ George T. Frampton Jr.]

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

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

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

Attachment 3 - Map of Coastal Barrier Resources System Units
in the vicinity of Corps Projects in Congressional District NC-7
Lea Island Complex L07
Wrightsville Beach Unit L08
Masonboro Island Unit L09



Congress of the United States
Washington, DC 20515

June 20, 2018

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

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

Dear Acting Director Sheehan:

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

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

¹ S. Rep. No. 97-419, at 2.

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

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

Thank you for your consideration.

Respectfully,



Garret Graves
Member of Congress



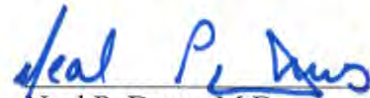
Doug Lamborn
Member of Congress



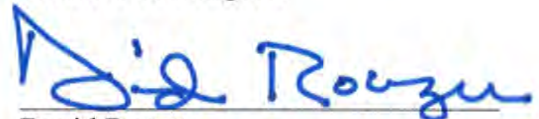
Walter B. Jones
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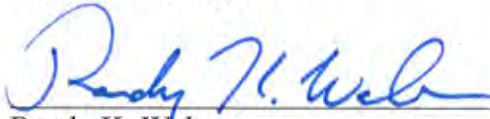
Frank A. LoBiondo
Member of Congress



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



David Rouzer
Member of Congress



Randy K. Weber
Member of Congress

Enclosures

QUESTIONS

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

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



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



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

DEC 21 2018

The Honorable David Rouzer
House of Representatives
Washington, D.C. 20515

Dear Representative Rouzer:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director

From: [Beaumont, Melissa](#)
To: [Niemi, Katie](#)
Cc: [Martha Balis Larsen](#); [Jonathan Phinney](#); [Dana Wright](#); [Gina Shultz](#); [Frazer, Gary](#); [Martin Kodis](#)
Subject: Re: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
Date: Tuesday, May 14, 2019 1:30:00 PM

Hi Katie,

Thank you very much for sending. Will do!

Melissa

On Tue, May 14, 2019 at 12:08 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hello Melissa,

Attached is the info memo (and related attachments) for the Secretary's meeting with Rep. Rouzer. Please let me know if you need additional information.

Thanks!

Katie

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

On Mon, May 13, 2019 at 7:31 AM Frazer, Gary <gary_frazer@fws.gov> wrote:

See below. Due to Melissa by noon Tuesday. I will be on travel, so do not worry about running it by me. Besides, you've done a variation of this several times already. -- GDF

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

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Fri, May 10, 2019 at 6:13 PM
Subject: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
To: Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>
Cc: Tatiana Hendrix <tatiana_hendrix@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>

Hi Gary,

We received a request from OCL today for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). The issues they would like information on are general CBRA background, on the SOL opinion described the attached letters, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/> My apologies for the quick turnaround on this one.

Please let me know if you have any questions and thank you for your help!

Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Playforth, Taylor](#)
To: [Budd-Falen, Karen](#)
Cc: [Katie Mills](#); [Melissa Beaumont](#)
Subject: CBRA Borrow Site Materials - - Issue of Interest from Congress
Date: Tuesday, May 14, 2019 1:45:26 PM
Attachments: [Enclosures - Sol Opinion exception 6\(a\)\(6\)\(G\) and USACE letter.pdf](#)
[Letter to Dir Sheehan on CBRA.PDF](#)
[068399 Signed.pdf](#)

Karen,

Per our conversation, I'm sharing the SOL memo, incoming, and response letters on the issue and cc'ing our colleagues who I've engaged with on the subject.

For awareness, although we have responded to their letter, these offices are still engaged on the subject and many of them would like to raise the issue with the Secretary.

Thank you for your attention to this matter.

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

FWS.CW.0380

Memorandum

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

From: Charles P. Raynor
Assistant Solicitor
Fish and Wildlife

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

Introduction

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

Background

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

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

.

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

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

purposes may receive Federal funding.

Discussion

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

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

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

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

Conclusion

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

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

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



United States Department of the Interior

OFFICE OF THE SECRETARY

1849 C Street, N.W.
Washington, D.C. 20240

JUN 12 1995

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

Dear Dr. Zirschky:

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

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

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

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

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

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

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

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

Sincerely,

/s/ George T. Frampton Jr.]

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

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

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

From: [Hendrix, Tatiana](#)
To: [Beaumont, Melissa](#)
Cc: [Gary Frazer](#); [Gina Shultz](#); [Martin Kodis](#); [Angela Gustavson](#)
Subject: Re: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
Date: Tuesday, May 14, 2019 2:37:59 PM

Hello all,

Just FYI that Margaret signed off on this memo today. I'll liaise with Melissa to see where it should go next.

Thanks,
Tatiana

On Fri, May 10, 2019 at 6:13 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Hi Gary,

We received a request from OCL today for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). The issues they would like information on are general CBRA background, on the SOL opinion described the attached letters, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/> My apologies for the quick turnaround on this one.

Please let me know if you have any questions and thank you for your help!

Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

--

Tatiana Hendrix
Acting Chief of Staff, Office of the Director
U.S. Fish and Wildlife Service
Desk: (202) 208-3843
Cell: (571) 228-0637
Tatiana_Hendrix@fws.gov

From: [Beaumont, Melissa](#)
To: [Andrea Travnicek](#)
Cc: [Playforth, Taylor](#); [Margaret Everson](#); [Aurelia Skipwith](#); [Maureen Foster](#); [Katie Mills](#); [Tatiana Hendrix](#)
Subject: Secretary Info Memo re CBRA
Date: Tuesday, May 14, 2019 4:02:09 PM
Attachments: [068399 Signed.pdf](#)
[Letter to Dir Sheehan on CBRA.PDF](#)
[5.14.19 Sec IM re CBRA.docx](#)

Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

INFORMATION/BRIEFING MEMORANDUM FOR THE ACTING SECRETARY

DATE:

FROM:

SUBJECT:

KEY FACTS

[This section should have very topline figures or facts that give an “at a glance” summary of what is to be discussed]

Stakeholder Positions:

Public Lands Affected:

BACKGROUND

[Broad context, history, backstory etc. of the issue as well as pertinent facts and process status]

DISCUSSION

[More focused on actions being taken or set to be taken by the Department on the issue in question, as well as relevant laws, policies, and Department regulations that relate to the issue and how they may be impacted.]

NEXT STEPS

[Next steps in process for issue at hand such as progress of proposed regulation or Department action]

From: [Hendrix, Tatiana](#)
To: [Beaumont, Melissa](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Tuesday, May 14, 2019 4:04:53 PM

It looks like the memo is just the template?

On Tue, May 14, 2019 at 4:02 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
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

--

Tatiana Hendrix
Acting Chief of Staff, Office of the Director
U.S. Fish and Wildlife Service
Desk: (202) 208-3843
Cell: (571) 228-0637
Tatiana_Hendrix@fws.gov

From: [Beaumont, Melissa](#)
To: [Andrea Travnicek](#)
Cc: [Playforth, Taylor](#); [Margaret Everson](#); [Aurelia Skipwith](#); [Maureen Foster](#); [Katie Mills](#); [Tatiana Hendrix](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Tuesday, May 14, 2019 4:09:04 PM
Attachments: [Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx](#)
[Attachment 2 - 2018 Congressional Letters.pdf](#)
[Attachment 3 - Map of CBRs Units L07 L08 L09.pdf](#)

My apologies - I sent the wrong attachments. Please find the correct versions attached.

On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
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

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Skipwith, Aurelia](#)
To: [Beaumont, Melissa](#)
Cc: [Andrea Travnicek](#); [Playforth, Taylor](#); [Margaret Everson](#); [Maureen Foster](#); [Katie Mills](#); [Tatiana Hendrix](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Wednesday, May 15, 2019 9:09:12 AM
Attachments: [Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx](#)
[Attachment 2 - 2018 Congressional Letters.pdf](#)
[Attachment 3 - Map of CBRs Units L07 L08 L09.pdf](#)

Good morning Melissa,

Thanks for providing these documents - very informative. There's a few citations in the briefing paper and wanted to review them. Would you be able to provide them? Thank you very much!

Aurelia Skipwith

Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
1849 C Street, NW, Room 3148
Washington, DC 20240
(202) 208-5837



NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Tue, May 14, 2019 at 4:08 PM
Subject: Re: Secretary Info Memo re CBRA
To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>
Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

My apologies - I sent the wrong attachments. Please find the correct versions attached.

On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

From: [Andrea Travnicek](#)
To: [Beaumont, Melissa](#)
Cc: [Playforth, Taylor](#); [Margaret Everson](#); [Aurelia Skipwith](#); [Maureen Foster](#); [Katie Mills](#); [Tatiana Hendrix](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Wednesday, May 15, 2019 9:56:16 AM

Thank you Melissa, we are reviewing.

Sent from my iPhone

On May 14, 2019, at 4:08 PM, Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

My apologies - I sent the wrong attachments. Please find the correct versions attached.

On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa
<melissa_beaumont@fws.gov> wrote:

Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
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

--

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

<Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf>

<Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx>

<Attachment 2 - 2018 Congressional Letters.pdf>

<Attachment 3 - Map of CBRS Units L07 L08 L09.pdf>

From: [Beaumont, Melissa](#)
To: [Skipwith, Aurelia](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Wednesday, May 15, 2019 10:01:15 AM
Attachments: [Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Attachment 3 - Map of CBRs Units L07 L08 L09.pdf](#)
[Attachment 2 - 2018 Congressional Letters.pdf](#)

Hi Aurelia,

Did you need the attachments referenced in the document or were there other citations you were looking for?

On Wed, May 15, 2019 at 9:09 AM Skipwith, Aurelia <aurelia_skipwith@ios.doi.gov> wrote:

Good morning Melissa,

Thanks for providing these documents - very informative. There's a few citations in the briefing paper and wanted to review them. Would you be able to provide them? Thank you very much!

Aurelia Skipwith

Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
1849 C Street, NW, Room 3148
Washington, DC 20240
(202) 208-5837



NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Tue, May 14, 2019 at 4:08 PM
Subject: Re: Secretary Info Memo re CBRA
To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>
Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

My apologies - I sent the wrong attachments. Please find the correct versions attached.

On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
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

--

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--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Melissa Beaumont](#)
To: [Skipwith, Aurelia](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Wednesday, May 15, 2019 10:16:14 AM

Happy to help! Just send me a note if you can think of anything else you all might need.

Sent from my iPhone

On May 15, 2019, at 10:13 AM, Skipwith, Aurelia <aurelia_skipwith@ios.doi.gov> wrote:

Hi Melissa,

You did a great job on providing all the documents and just the citations mentioned in the briefing paper. Much appreciated!

Aurelia Skipwith

Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
1849 C Street, NW, Room 3148
Washington, DC 20240
(202) 208-5837



NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

On Wed, May 15, 2019 at 10:01 AM Beaumont, Melissa
<melissa_beaumont@fws.gov> wrote:

Hi Aurelia,

Did you need the attachments referenced in the document or were there other citations you were looking for?

On Wed, May 15, 2019 at 9:09 AM Skipwith, Aurelia
<aurelia_skipwith@ios.doi.gov> wrote:

Good morning Melissa,

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Aurelia Skipwith

Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
1849 C Street, NW, Room 3148
Washington, DC 20240
(202) 208-5837



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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Tue, May 14, 2019 at 4:08 PM
Subject: Re: Secretary Info Memo re CBRA
To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>
Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

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Office: 202-208-4545
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Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

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--

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

Office: 202-208-4545

Desk: 202-208-4299

From: [Aurelia Skipwith](#)
To: [Melissa Beaumont](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Wednesday, May 15, 2019 10:26:38 AM

You are great. Thanks!

Sent from my iPhone

On May 15, 2019, at 10:16 AM, Melissa Beaumont <melissa_beaumont@fws.gov> wrote:

Happy to help! Just send me a note if you can think of anything else you all might need.

Sent from my iPhone

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Date: Tue, May 14, 2019 at 4:08 PM

Subject: Re: Secretary Info Memo re CBRA

To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>

Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith

<aurelia_skipwith@ios.doi.gov>, Maureen Foster

<maureen_foster@ios.doi.gov>, Katie Mills

<katie_mills@ios.doi.gov>, Tatiana Hendrix

<tatiana_hendrix@fws.gov>

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Melissa

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Hendrix, Tatiana](#)
To: [Melissa Beaumont](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Wednesday, May 15, 2019 10:59:04 AM

OK sounds good!

On Wed, May 15, 2019 at 10:58 AM Melissa Beaumont <melissa_beaumont@fws.gov> wrote:

I re-sent her the attachments and I think that was what she was looking for, but told her to let us know if it was something else she was looking for.

Sent from my iPhone

On May 15, 2019, at 10:57 AM, Hendrix, Tatiana <tatiana_hendrix@fws.gov> wrote:

I'm assuming Aurelia is referring to the 2 references to the U.S.C. in the first paragraph? I didn't see any other references in the memo.
Let me know if you want help responding to this one!

On Wed, May 15, 2019 at 9:09 AM Skipwith, Aurelia <aurelia_skipwith@ios.doi.gov> wrote:

Good morning Melissa,

Thanks for providing these documents - very informative. There's a few citations in the briefing paper and wanted to review them. Would you be able to provide them? Thank you very much!

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
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Date: Tue, May 14, 2019 at 4:08 PM
Subject: Re: Secretary Info Memo re CBRA
To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>

Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

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Melissa

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Melissa Beaumont
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--

Tatiana Hendrix
Acting Chief of Staff, Office of the Director
U.S. Fish and Wildlife Service
Desk: (202) 208-3843
Cell: (571) 228-0637
Tatiana_Hendrix@fws.gov

--

Tatiana Hendrix
Acting Chief of Staff, Office of the Director
U.S. Fish and Wildlife Service
Desk: (202) 208-3843
Cell: (571) 228-0637
Tatiana_Hendrix@fws.gov

From: [Kodis, Martin](#)
To: [Margaret Everson](#)
Cc: [Wainman, Barbara](#); [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: PLEASE REVIEW van drew letter revised
Date: Monday, May 20, 2019 5:42:02 PM
Attachments: [069830 Van Drew draft final CLA post FWP.docx](#)

Hi Margaret,

It would be great to get the Van Drew letter signed tomorrow before the hearing.

Barbara and I consulted on the attached revision. Most of the incoming Van Drew letter focused on reclassifying the CBRS unit to an OPA. So the first half of the letter deals with that and CBRA in general.

The sand mining issue is at the end of the response and we revised simply to say we're reviewing the 1994 opinion. This is in track changes. I'd like to send to Cole tonight 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

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

Thank you for your letter of March 14, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the U.S. Army Corps of Engineers' (Corps) Townsends Inlet to Cape May Inlet Shore Protection Project. Your letter requests the Service to consider reclassifying a borrow site within Stone Harbor Unit NJ-09 of the John H. Chafee Coastal Barrier Resources System (CBRS) to an Otherwise Protected Area (OPA). Such a reclassification would allow federal funds to be used to dredge sand for the renourishment of a federally-authorized coastal storm damage reduction project extending from Avalon to Stone Harbor. The Service does not have the authority to administratively reclassify Unit NJ-09 from a System Unit to an OPA; such a change requires legislative action.

By way of background, the Coastal Barrier Resources Act of 1982 (CBRA) (Pub. L. 97-348) originally established the CBRS. 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. The CBRS contains two types of units: "OPAs" and "System Units." Stone Harbor Unit NJ-09 was designated as a System Unit by Congress through the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101-591) on November 16, 1990. Like all System Units, it is subject to CBRA's full suite of restrictions on new federal expenditures and financial assistance. OPAs (comprised predominantly of park lands and aquatic habitat at the time of designation) only restrict federal flood insurance.

The Service recently reviewed Unit NJ-09 as part of an ongoing project to produce modernized maps for the CBRS units in the nine states most affected by Hurricane Sandy, including New Jersey. The Hurricane Sandy Remapping Project supports a Congressional directive in the 2006 CBRA reauthorization (Pub. L. 109-226) requiring the Service to produce digital maps for the entire CBRS and make recommendations to Congress for its expansion. In the process of preparing the draft revised boundaries for this project, the Service conducted a comprehensive review of each unit, including whether areas at the time of designation were held for conservation or recreation in perpetuity and met the CBIA definition of "otherwise protected."

The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 affirmed that the area was appropriately included within the System Unit and found no evidence indicating that it was "otherwise protected" at the time of designation in 1990. The New Jersey Department of Environmental Protection in 1982 also supported the inclusion of the Stone ~~Point~~ Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters).

We continue to move forward with the Hurricane Sandy Remapping Project. The Service released draft revised boundaries for the first batch of CBRS units in the project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We also completed a 120-day public review in April 2019 of the draft revised boundaries for the second batch of the project. Now that both comment periods have closed, we will complete our review of comments received,

including comments regarding Unit NJ-09, and begin preparing final recommended maps along with summaries of and responses to the comments received for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

Your letter also referenced a restoration project from the 1990s that borrowed sand from Unit NJ-09 – that project differed from the project proposed in 2016. The 1990s project utilized sand dredged from within Unit NJ-09 for an environmental restoration project at Stone Harbor Point within the CBRS unit. The 2016 project proposed to use sand dredged from within Unit NJ-09 to nourish a developed shoreline outside of the CBRS. The Service's determination on the 2016 project was guided by the enclosed 1994 Solicitor's opinion. Based on your interest in this matter, we are reviewing the 1994 Solicitor's opinion. Please see the enclosed 1994 Solicitor's opinion as well as a 1995 letter to the Corps and 2018 letter to Representative LoBiondo regarding the Service's interpretation of CBRA on this matter.

We thank you for your interest in this matter. We will keep your office informed of any developments in the Hurricane Sandy Remapping Project and our review of the 1994 Solicitor's opinion. If you have any additional questions, please contact the Service's Chief of Congressional and Legislative Affairs, Mr. Martin Kodis, at (703) 358-2241.

Sincerely,

Principal Deputy Director

Enclosures

From: [Kodis, Martin](#)
To: [Cole Rojewski](#); [Playforth, Taylor](#)
Cc: [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: van drew letter revised
Date: Monday, May 20, 2019 9:36:39 PM
Attachments: [069830 Van Drew draft final CLA post FWP.docx](#)

Hi Cole and Taylor,

It would be good to get the Van Drew letter signed tomorrow before the hearing tomorrow afternoon.

The attached revision is with Margaret, but given the short time left I thought I'd give you a concurrent look. If you are ok with it, I can let Margaret know tomorrow morning and maybe we can get it signed before she sees Rep. Van Drew at the hearing.

Most of the incoming Van Drew letter focused on reclassifying the CBRS unit to an OPA. So the first half of the response letter deals with that and CBRA in general. That part of the response is unchanged.

The sand mining issue is at the end of the response and we revised it simply - to say we're reviewing the 1994 opinion. This is in track changes.

Please let me know your thoughts. If there's not enough time that's fine too, Margaret will be prepared in any case.

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

From: [Kodis, Martin](#)
To: [Playforth, Taylor](#)
Cc: [Cole Rojewski](#); [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Re: van drew letter revised
Date: Tuesday, May 21, 2019 9:26:58 AM

That's a great point. We have not asked them. I think that's a decision to be made above the staff atty level (maybe by Karen). Is that something you can ask SOL? If it doesn't work out, then Margaret will be prepared to say that at the hearing and that we'll get the response back to him soon.

Thanks,

Marty

On Tue, May 21, 2019 at 9:13 AM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:
I'm generally good with it but has SOL signed off on us saying they're reviewing?

I know they're ok with us expressing that verbally but just want to be sure they're good with it in an official letter.

On Mon, May 20, 2019 at 9:36 PM Kodis, Martin <martin_kodis@fws.gov> wrote:
Hi Cole and Taylor,

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Falls Church, VA 22041

703-358-2241 ph
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--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

Hi Karen,

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

Karen,

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Kodis, Martin](#)
To: [Donnise Hancock](#)
Cc: [Melissa Beaumont](#); [Wainman, Barbara](#)
Subject: Please print for signature
Date: Tuesday, May 21, 2019 11:38:52 AM
Attachments: [069830 Van Drew final approved by OCL.docx](#)

Hi Donnise.

Per our discussion, 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

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In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

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Washington, D.C. 20515

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Sincerely,

Principal Deputy Director

Enclosures

From: [Kodis, Martin](#)
To: [Playforth, Taylor](#)
Cc: [Cole Rojewski](#); [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Re: van drew letter revised
Date: Tuesday, May 21, 2019 12:49:15 PM
Attachments: [069830 Van Drew draft final CLA to OCL May 21 2019.docx](#)

Taylor and Cole,

FYI I understand we won't get the letter out today and that you'll be discussing further in OCL. Attached here is the latest version of the letter - we changed one thing from the last version. At the end of the penultimate paragraph (on page 2), instead of saying: "Based on your interest in this matter, we are reviewing the 1994 Solicitor's opinion." We changed it to say: "We understand you have an interest in this matter and we are reviewing the 1994 Solicitor's opinion." Margaret thought that's a better approach.

Thank you.

Marty

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I'm generally good with it but has SOL signed off on us saying they're reviewing?

I know they're ok with us expressing that verbally but just want to be sure they're good with it in an official letter.

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Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

Thank you for your letter of March 14, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the U.S. Army Corps of Engineers' (Corps) Townsends Inlet to Cape May Inlet Shore Protection Project. Your letter requests the Service to consider reclassifying a borrow site within Stone Harbor Unit NJ-09 of the John H. Chafee Coastal Barrier Resources System (CBRS) to an Otherwise Protected Area (OPA). Such a reclassification would allow federal funds to be used to dredge sand for the renourishment of a federally-authorized coastal storm damage reduction project extending from Avalon to Stone Harbor. The Service does not have the authority to administratively reclassify Unit NJ-09 from a System Unit to an OPA; such a change requires legislative action.

By way of background, the Coastal Barrier Resources Act of 1982 (CBRA) (Pub. L. 97-348) originally established the CBRS. 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. The CBRS contains two types of units: "OPAs" and "System Units." Stone Harbor Unit NJ-09 was designated as a System Unit by Congress through the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101-591) on November 16, 1990. Like all System Units, it is subject to CBRA's full suite of restrictions on new federal expenditures and financial assistance. OPAs (comprised predominantly of park lands and aquatic habitat at the time of designation) only restrict federal flood insurance.

The Service recently reviewed Unit NJ-09 as part of an ongoing project to produce modernized maps for the CBRS units in the nine states most affected by Hurricane Sandy, including New Jersey. The Hurricane Sandy Remapping Project supports a Congressional directive in the 2006 CBRA reauthorization (Pub. L. 109-226) requiring the Service to produce digital maps for the entire CBRS and make recommendations to Congress for its expansion. In the process of preparing the draft revised boundaries for this project, the Service conducted a comprehensive review of each unit, including whether areas at the time of designation were held for conservation or recreation in perpetuity and met the CBIA definition of "otherwise protected."

The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 affirmed that the area was appropriately included within the System Unit and found no evidence indicating that it was "otherwise protected" at the time of designation in 1990. The New Jersey Department of Environmental Protection in 1982 also supported the inclusion of the Stone ~~Point~~ Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters).

We continue to move forward with the Hurricane Sandy Remapping Project. The Service released draft revised boundaries for the first batch of CBRS units in the project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We also completed a 120-day public review in April 2019 of the draft revised boundaries for the second batch of the project. Now that both comment periods have closed, we will complete our review of comments received,

including comments regarding Unit NJ-09, and begin preparing final recommended maps along with summaries of and responses to the comments received for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

Your letter also referenced a restoration project from the 1990s that borrowed sand from Unit NJ-09 – that project differed from the project proposed in 2016. The 1990s project utilized sand dredged from within Unit NJ-09 for an environmental restoration project at Stone Harbor Point within the CBRS unit. The 2016 project proposed to use sand dredged from within Unit NJ-09 to nourish a developed shoreline outside of the CBRS. The Service's determination on the 2016 project was guided by the enclosed 1994 Solicitor's opinion. Based on your We understand you are interested in this matter, and we are reviewing the 1994 Solicitor's opinion. Please see the enclosed 1994 Solicitor's opinion as well as a 1995 letter to the Corps and 2018 letter to Representative LoBiondo regarding the Service's interpretation of CBRA on this matter.

~~We~~ Thank you for your interest in this matter. We will keep your office informed of any developments in the Hurricane Sandy Remapping Project and our review of the 1994 Solicitor's opinion. If you have any additional questions, please contact the Service's Chief of Congressional and Legislative Affairs, Mr. Martin Kodis, at (703) 358-2241.

Sincerely,

Principal Deputy Director

Enclosures

From: [Beaumont, Melissa](#)
To: [Budd-Falen, Karen](#)
Cc: [Peg Romanik](#); [Benjamin Jesup](#); [Margaret Everson](#)
Subject: Re: CBRA Borrow Site Materials - - Issue of Interest from Congress
Date: Wednesday, May 22, 2019 8:23:32 AM

Thanks Karen! That would be Gary Frazer and his staff who work on CBRA issues.

On Wed, May 22, 2019 at 7:45 AM Budd-Falen, Karen <karen.budd-falen@sol.doi.gov> wrote:

 Melissa:

 I am OK with this letter.

 Who in FWS would be the staff person with the lead on this issue? I will figure out who in the Sol. office they should work with (b)(5)ACP(b)(5)ACP(b)(5)ACP(b)(5)ACP
(b)(5)ACP(b)(5)ACP(b)(5)ACP(b)(5)ACP

 Thanks

On Tue, May 21, 2019 at 9:37 AM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

 Hi Karen,

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 Thanks,
 Melissa

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

From: **Playforth, Taylor** <taylor_playforth@ios.doi.gov>
Date: Tue, May 14, 2019 at 1:45 PM
Subject: CBRA Borrow Site Materials - - Issue of Interest from Congress
To: Budd-Falen, Karen <karen.budd-falen@sol.doi.gov>
Cc: Katie Mills <katie_mills@ios.doi.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>

 Karen,

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Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

--

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

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: karen.budd-falen@sol.doi.gov on behalf of [Budd-Falen, Karen](#)
To: [Margaret Everson](#); [Peg Romanik](#); katie_mills@ios.doi.gov
Subject: Fwd: Secretary Info Memo re CBRA
Date: Thursday, May 30, 2019 2:57:56 PM
Attachments: [Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx](#)
[Attachment 2 - 2018 Congressional Letters.pdf](#)
[Attachment 3 - Map of CBRS Units L07 L08 L09.pdf](#)

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thanks

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

From: **Budd-Falen, Karen** <karen_budd-falen@ios.doi.gov>
Date: Thu, May 30, 2019 at 2:48 PM
Subject: Fwd: Secretary Info Memo re CBRA
To: <katie_mills@ios.doi.gov>

Karen

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

From: **Foster, Maureen** <maureen_foster@ios.doi.gov>
Date: Tue, May 28, 2019 at 2:13 PM
Subject: Fwd: Secretary Info Memo re CBRA
To: Karen Budd-Falen <karen_budd-falen@ios.doi.gov>

For your review and comment. You will likely be invited to join SOI for an upcoming meeting with Representative.

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

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Tue, May 14, 2019 at 4:08 PM
Subject: Re: Secretary Info Memo re CBRA
To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>
Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

My apologies - I sent the wrong attachments. Please find the correct versions attached.

On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
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

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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

--

Karen Budd-Falen,
Deputy Solicitor for Parks and Wildlife
Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks
Cell 202-365-5854

--

Karen Budd-Falen,
Deputy Solicitor for Parks and Wildlife
Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks
Cell 202-365-5854

From: [Mills, Katie](#)
To: [Budd-Falen, Karen](#)
Cc: [Margaret Everson](#); [Peg Romanik](#); [Benjamin Jesup](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Thursday, May 30, 2019 3:08:54 PM

I've looked into this some, and I'd like to bounce a couple things off of Peg and Ben.

On Thu, May 30, 2019 at 2:57 PM Budd-Falen, Karen <karen_budd-falen@ios.doi.gov> wrote:

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thanks

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

From: Budd-Falen, Karen <karen_budd-falen@ios.doi.gov>
Date: Thu, May 30, 2019 at 2:48 PM
Subject: Fwd: Secretary Info Memo re CBRA
To: <katie_mills@ios.doi.gov>

Karen

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

From: Foster, Maureen <maureen_foster@ios.doi.gov>
Date: Tue, May 28, 2019 at 2:13 PM
Subject: Fwd: Secretary Info Memo re CBRA
To: Karen Budd-Falen <karen_budd-falen@ios.doi.gov>

For your review and comment. You will likely be invited to join SOI for an upcoming meeting with Representative.

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

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Tue, May 14, 2019 at 4:08 PM
Subject: Re: Secretary Info Memo re CBRA
To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>
Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

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On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon Andrea,

Attached is an information memo and related attachments for the Secretary requested by OCL in preparation of a meeting with Congressman Rouzer. OCL requested this back tomorrow, so we apologize for the tight turnaround.

Please let me know if you have any questions.

Thank you,
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

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
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--

Karen Budd-Falen,
Deputy Solicitor for Parks and Wildlife
Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks
Cell 202-365-5854

--

Karen Budd-Falen,
Deputy Solicitor for Parks and Wildlife
Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks
Cell 202-365-5854

--

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

From: [Foster, Maureen](#)
To: [Playforth, Taylor](#)
Cc: [Skipwith, Aurelia](#); [Baumont, Melissa](#); [Margaret Everson](#); [Katie Mills](#); [Tatiana Hendrix](#); [Tasha Robbins](#); [Karen Budd-Falen](#)
Subject: Re: Secretary Info Memo re CBRA
Date: Tuesday, June 4, 2019 5:35:27 PM

Sending you what we have in a separate email.

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

On Tue, Jun 4, 2019 at 5:32 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:
Also circling back on the status of this memo?

On Thu, May 30, 2019 at 4:31 PM Foster, Maureen <maureen_foster@ios.doi.gov> wrote:
We will get these to you tomorrow. Sorry for our delay.

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

On Thu, May 30, 2019 at 4:30 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

Following up on the status of the memos?

Rouzer's scheduler expects to be connected with the Secretary's scheduler first of next week and we need to have the memo's final before that can happen.

Thank you for making this a priority!

On Tue, May 28, 2019 at 2:12 PM Foster, Maureen <maureen_foster@ios.doi.gov> wrote:

Dropping Andrea. We will get the documents to Karen.

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

On Tue, May 28, 2019 at 2:09 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

Thanks, I think it would be ideal for Karen to weigh-in on the materials as well as join the meeting with the Secretary. The meeting hasn't yet been scheduled as Cole has requested an approved memo before we connect the schedulers so following up on that.

Also, if appropriate we can drop Andrea to avoid spamming her.

Thanks all!

On Tue, May 28, 2019 at 1:57 PM Foster, Maureen <maureen_foster@ios.doi.gov> wrote:

With Andrea moving to ASLW, I am checking to see if Karen can participate in this meeting (no recusals). Also adding Tasha for scheduling.

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

On Tue, May 28, 2019 at 1:52 PM Playforth, Taylor

<taylor_playforth@ios.doi.gov> wrote:

Hey all,

Rep. Rouzer's office has been following up with me on the scheduling so circling back on the status of the briefing materials. I see Aurelia has some questions on the supporting materials so I'm not sure if those questions were satisfied and I know Katie had some additional information from the legislative history that may need to be included before we get the official FWP sign off.

For additional awareness, when I spoke to Cole about fulfilling Rep. Rouzer's request to meet with the Secretary on CBRA borrow sites I shared that this had also been an issue of interest to Rep. Graves and Rep. Van Drew so Cole suggested we explore the option of opening the meeting to those members as well.

Let me know your thoughts and feel free to give me a call to discuss further.

Thanks!

On Wed, May 15, 2019 at 9:09 AM Skipwith, Aurelia

<aurelia_skipwith@ios.doi.gov> wrote:

Good morning Melissa,

Thanks for providing these documents - very informative. There's a few citations in the briefing paper and wanted to review them. Would you be able to provide them? Thank you very much!

Aurelia Skipwith

Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
1849 C Street, NW, Room 3148
Washington, DC 20240
(202) 208-5837



NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

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

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>

Date: Tue, May 14, 2019 at 4:08 PM

Subject: Re: Secretary Info Memo re CBRA

To: Andrea Travnicek <andrea_travnicek@ios.doi.gov>

Cc: Playforth, Taylor <taylor_playforth@ios.doi.gov>, Margaret Everson <margaret_e_everson@fws.gov>, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>, Maureen Foster <maureen_foster@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Tatiana Hendrix <tatiana_hendrix@fws.gov>

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On Tue, May 14, 2019 at 4:01 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon Andrea,

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Please let me know if you have any questions.

Thank you,
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

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
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Taylor Playforth
Senior Advisor
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Office of Congressional & Legislative Affairs
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Taylor Playforth
Senior Advisor
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(202) 795-0977

From: [Chang, Lena](#)
To: katie_mills@ios.doi.gov
Cc: [Charisa Morris](#); [Beaumont, Melissa](#)
Subject: Following up on yesterday's inquiry re: CBRA/CBRS Packages
Date: Tuesday, June 11, 2019 1:13:49 PM
Attachments: [069830.zip](#)
[069862.zip](#)

Hi Katie,

As a follow up from our FWS-FWP check-in meeting yesterday, we are sending you additional information regarding the four CBRA/CBRS packages discussed from the agenda. Below is the list of packages and their statuses. For the two surnamed by Margaret (#3 and 4), please find the attached folders including the incoming letters and draft responses.

1. #070020 CBRA issues for Public Comment period - **with Division of Budget and Technical Support (5/31)**
2. #069934 CBRA concerns for constituent Cooper- **With DO (5/29)**
3. #069830 Requests to reclassify CBRS Unit NJ-09 as an otherwise protected Area; **Surnamed by Margaret on 5/6, with SIO-OCL 5/29**
4. #069862 CBRS Maps Boundary Changes (from rep Pallone) - **Surnamed by Margaret on 5/6, with SIO-OCL**

Please let me know if you have any questions. Thank you!

Regards,
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

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

Thank you for your letter of March 14, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the U.S. Army Corps of Engineers' (Corps) Townsends Inlet to Cape May Inlet Shore Protection Project. Your letter proposes that a borrow site within Stone Harbor Unit NJ-09 of the John H. Chafee Coastal Barrier Resources System (CBRS) be reclassified to an Otherwise Protected Area (OPA). This reclassification would allow federal funds to be used to dredge sand for the renourishment of a federally-authorized coastal storm damage reduction project extending from Avalon to Stone Harbor.

The Coastal Barrier Resources Act of 1982 (CBRA) (Pub. L. 97-348) originally established the CBRS. 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. The CBRS is currently comprised of 870 geographic units totaling 3.5 million acres and contains two types of units: "OPAs" and "System Units." OPAs (comprised predominantly of park lands and aquatic habitat at the time of designation) only restrict federal flood insurance. System Units (comprised predominantly of private lands and aquatic habitat at the time of designation) are subject to CBRA's full suite of restrictions on new federal expenditures and financial assistance. Stone Harbor Unit NJ-09 was designated as a System Unit by Congress through the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101-591) on November 16, 1990.

The CBRS is depicted on a set of maps that is maintained by the Service. Aside from three minor exceptionsⁱ, only legislation enacted by Congress can modify the CBRS maps. The Service does not have the authority to administratively reclassify Unit NJ-09 from a System Unit to an OPA; such a change requires legislative action.

The Service is conducting a project to produce modernized maps for the CBRS units in the nine states most affected by Hurricane Sandy, including New Jersey. This project supports a Congressional directive in the 2006 CBRA reauthorization (Pub. L. 109-226) requiring the Service to produce digital maps for the entire CBRS and make recommendations for its expansion. In the process of preparing the draft revised boundaries for this project, the Service conducted a comprehensive review of each unit. When reviewing unit type classifications (System Unit versus OPA), we considered whether areas (at the time of designation) were held for conservation or recreation in perpetuity and met the CBIA definition of "otherwise protected," meaning "within the boundaries of an area established under federal, state, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes."

The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 reaffirmed that the area was appropriately included within the System Unit and found no new evidence indicating that it was "otherwise protected" at the time of designation in 1990. Furthermore, in 1982 the New Jersey Department of Environmental Protection urged the inclusion of the Stone Point

Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters). As stated in the *Federal Register* notice for the project (83 FR 10739), if an area is dedicated to conservation and/or recreation after its initial inclusion within a System Unit, it is generally not reclassified to an OPA.

The Service released draft revised boundaries for the first batch of CBRS units included in the Hurricane Sandy Remapping Project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We received comments regarding Unit NJ-09. We also recently conducted a 120-day public review of the draft revised boundaries for the second batch of the project. That comment period closed on April 17, 2019. Now that both comment periods have closed, we will begin preparing final recommended maps along with summaries of and responses to the comments received for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

Your letter also noted that the Service had originally approved a Corps project within the unit, but in 2016 reversed our position. We'd like to clarify that the scope of the previous project in the 1990s was significantly different from the project proposed in 2016. It is our understanding that the previous project utilized sand dredged from within Unit NJ-09 exclusively for a one time environmental restoration project at Stone Harbor Point within the CBRS unit. The 2016 project proposed to use sand dredged from within Unit NJ-09 to nourish a developed shoreline outside of the CBRS. Please see the enclosed 1994 Solicitor's opinion as well as a 1995 letter to the U.S. Army Corps of Engineers and 2018 letter to Representative LoBiondo regarding the Service's interpretation of CBRA on this matter.

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

Enclosures

ⁱ These exceptions, found in 16 U.S.C. 3503, include: (1) CBRA's five-year review requirement that solely considers changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess federal property to the CBRS.

Congress of the United States
House of Representatives
Washington, DC 20515-3002

March 14, 2019

Ms. Aurelia Skipwith, Acting Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

RE: Request to Reclassify CBRS Unit NJ-09 as an Otherwise Protected Area

Dear Director Skipwith:

I am writing about an issue that impacts both environmental enhancement and the sound stewardship of taxpayer funds. The Townsends Inlet to Cape May Inlet Shore Protection Project covers the length of the Boroughs of Avalon and Stone Harbor in my District. Due to the allocation of Fiscal Year 2019 Corps of Engineers Work Plan funds for the scheduled renourishment of this project, I am writing to propose the reclassification of Coastal Barrier Resources System (CBRS) Unit NJ-09 so that the permitted borrow site for this project in Hereford Inlet is reclassified as an Otherwise Protected Area. This will save taxpayers at least \$6.5 million dollars and enable the Stone Harbor Point Refuge to receive the sand that created more than 1.5 miles of habitat.

The U.S. Fish and Wildlife Service (USFWS) had originally approved that site with the condition that the Army Corps of Engineers (Army Corps) create a wildlife habitat at the southern end of the project in the form of a perpetual deed-restricted easement. That condition was met, and the refuge has flourished because the sand from Hereford Inlet placed on the shore protection project flows back to the south. In 2016, the USFWS reversed its position and rejected the use of NJ-09.

The USFWS objection to the use of the Hereford Inlet borrow site resulted in sediment being taken from the Townsends Inlet and transported at an additional price tag of \$6.5 million. Not only is this extra cost unnecessary, but sediment surveys have concluded that sediment available from the Townsends Inlet is not enough to nourish both the Avalon and Stone Harbor portions of the project.

No part of the shorelines of the two communities is within a Coastal Barrier Resources Act (CBRA) zone, but in 2016 USFWS relied on a 1994 opinion from the Department of Interior Solicitor's Office that declared that sand from a CBRA unit could not be placed on a non-CBRA shoreline. Rather than argue that point, I am suggesting that the common-sense way to resolve this issue without legislative or legal activity is to reclassify the permitted borrow zone as an Otherwise Protected Area, thus allowing federal funds to be used to dredge that sand for the renourishment of the federally-authorized coastal storm damage reduction project.

Sincerely,



Jeff Van Drew
U.S. Representative

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069862

The Honorable Frank Pallone, Jr.
House of Representatives
Washington, D.C. 20515

Dear Representative Pallone:

Thank you for your letter of March 8, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the proposed changes to the John H. Chafee Coastal Barrier Resources System (CBRS) in Monmouth County, New Jersey. The establishment of Ware Creek Unit NJ-18, which was proposed as a new CBRS unit by the Service in 2018, would impact property and facilities owned and maintained by Monmouth County, including a Confined Disposal Area. Your letter asks that we take into consideration the concerns that were raised by the County in their comment letter to the Service dated June 26, 2018. You also requested a meeting among your office, appropriate Service staff, and the County to ensure that the County's concerns are fully understood and possible remedies are discussed.

In the process of preparing the draft revised boundaries for the Hurricane Sandy Remapping Project, the Service identified undeveloped coastal barrier areas and associated aquatic habitat for possible inclusion to the CBRS (per a directive in Pub. L. 109-226) as either entirely new units or additions to existing units. The Ware Creek area in Monmouth County was identified as proposed new CBRS Unit NJ-18. The Belford New York Waterway Ferry Terminal and associated parking lot are located outside of the proposed new unit, but the N-61 Interim Confined Disposal Area and a portion of the shoreline to the east of the ferry terminal are within the proposed new unit. We sought public comment on the proposed changes to the CBRS during a 120-day comment period in 2018.

The Service is in receipt of the comment letter from Monmouth County dated June 26, 2018. We are currently reassessing proposed new Unit NJ-18. Some data collected by the Service for the project had indicated that the western portion of the proposed new unit was wetlands. However, upon further review of recent aerial imagery and the information submitted by the County, we found that the western portion of the area that was proposed for addition to the CBRS (in the immediate vicinity of the Confined Disposal Area) does not qualify for inclusion within the CBRS. On March 22, 2019, we held a conference call with Monmouth County to discuss their concerns. During this call, we also learned that there is a capped landfill near the proposed new unit, and that there are concerns regarding the potential effects of a CBRS designation on the landfill. We will continue to coordinate closely with Monmouth County to gather the information necessary to make a recommendation to Congress, and plan to revise the mapping accordingly.

We are currently conducting a public review of the draft revised boundaries for the second batch of the Hurricane Sandy Remapping Project which includes draft revised boundaries for the CBRS units in Connecticut, Maryland, New York (Long Island), Rhode Island, and Virginia. Following the close of the second public review period in April 2019, we will make appropriate adjustments to the boundaries (for all units included in the project) based on public comments, statutory development criteria, and objective mapping protocols. We will then prepare

summaries of and responses to the comments received along with final recommended maps for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

We hope this information is helpful. We anticipate that our efforts to collaborate directly with Monmouth County on this matter will alleviate the need for a meeting with your office; however, if you feel otherwise please me at (202) 208-4646.

Sincerely,

Gary Frazer

Congress of the United States
House of Representatives
Washington, DC 20515-3006

March 8, 2019

Wendi Weber
Regional Director
U.S. Fish & Wildlife Service
Northeast Region
300 Westgate Center Dr.
Hadley, MA 01035

Ms. Weber:

My office has been contacted by the County of Monmouth regarding concerns they have with the U.S. Department of the Interior, Fish & Wildlife Services (USFWS) proposed changes to the Coastal Barrier Resources System maps as part of the current remapping process.

As detailed in the County's June 26, 2018 letter to USFWS, the proposed changes to the boundaries include properties owned and maintained by the County. Additional County owned and maintained properties run adjacent to the draft revised boundaries. This includes the County Confined Disposal Area, County Reclamation site, as well as the terminal and parking area for the New York Waterway Ferry. Each of these properties would be severely impacted by the restrictions that come with inclusion a CBRS boundary. For example, future beneficial repurposing of the reclamation center, or necessary shoreline stabilization at the ferry terminal land could be prohibited or limited by these changes. Additional areas of concern can be found in the County's above referenced letter.

While I have long been an adamant supporter of the critical protections and policies put in place through CBRS, I ask that you please take into consideration the concerns that have been raised by the County of Monmouth. I would like to request a meeting among your staff, my office and the County at a time convenient to all parties in order to ensure the concerns are fully understood and possible remedies could be discussed.

Thank you in advance for your time and attention to this matter.

Sincerely,


FRANK PALLONE, JR.
Member of Congress

CC: Joseph Ettore, Engineer, County of Monmouth

REPLY TO:

☐ 237 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3006
(202) 225-4671

☐ 504 BROADWAY
LONG BRANCH, NJ 07740
(732) 571-1140

☐ 67/69 CHURCH STREET
NEW BRUNSWICK, NJ 08901
(732) 249-8892

TOLL-FREE NUMBER:
(888) 423-1140

pallone.house.gov

Received

MAR 18 2019

Regional Director's Office

From: [Melissa Beaumont](#)
To: [Pool, Taylor](#)
Cc: [Liz Berg](#)
Subject: Re: Trouble logging into DTS
Date: Tuesday, June 11, 2019 3:33:29 PM

Thanks Taylor that's helpful! I think we go what we needed to FWP.

Sent from my iPhone

On Jun 11, 2019, at 3:07 PM, Pool, Taylor <taylor_pool@fws.gov> wrote:

Hi Melissa,

Sorry, I am just seeing your email now.

As it relates to the letter to Rep. Graves and others regarding sand mining within a CBRS unit, the December letter is the latest letter.

There is another letter from Rep. Van Drew regarding changing a CBRS unit to an OPA unit. That letter (DCN 068390) is currently with OCL (as of 5/29/19).

Please let me know if you need anything else, or have any other questions. Also, for your reference, Liz Berg in our office covers CBRA (cc'd).

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, Jun 11, 2019 at 9:32 AM Beaumont, Melissa
<melissa_beaumont@fws.gov> wrote:

Hi Taylor,

Apologies if this is not your issue, but do you know where I can find these letters? I didn't see them in DTS. I only saw the older versions sent out in December (attached), unless there was no follow up letter?

Thanks,
Melissa

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

From: **Mills, Katie** <katie_mills@ios.doi.gov>

Date: Tue, Jun 11, 2019 at 8:32 AM
Subject: Fwd: Trouble logging into DTS
To: Melissa Beaumont <melissa_beaumont@fws.gov>

Hey Melissa, do you mind helping me with this regarding the correspondence letters about CBRA and CBRs? Thank you

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

From: **Playforth, Taylor** <taylor_playforth@ios.doi.gov>
Date: Mon, Jun 10, 2019 at 4:30 PM
Subject: Trouble logging into DTS
To: Katie Mills <katie_mills@ios.doi.gov>

I'm having trouble logging into DTS...I'm trying to fix my access but in the meantime do you want to reach out to your correspondence folks for the CBRA letters from Van Drew, Rouzer, Graves, and Hoyer?

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Frazer, Gary](#)
To: [Mills, Katie](#)
Cc: [Melissa Beaumont](#); [Margaret Everson](#)
Subject: Re: CBRA question
Date: Wednesday, June 12, 2019 10:43:12 AM

Will pull together information and get back to you. -- GDF

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

On Wed, Jun 12, 2019 at 8:49 AM Mills, Katie <katie_mills@ios.doi.gov> wrote:

Good morning,

Does FWS have any information or statistics on CBRA and our consultations? How many consultations we do a year? How many we provide an unfavorable opinion to, and reasoning? Have we ever been sued for any CBRA consultation? Thank you!

--

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

From: [Renkes, Gregg](#)
To: [Margaret Everson](#); [Cole Rojewski](#)
Subject: Senator Tillis concerns regarding FWS actions - time sensitive
Date: Thursday, June 13, 2019 4:14:11 PM
Attachments: [NC Letter to USACE re Carolina Wrightsville Beach Borrow Sites.pdf](#)

Cole, This is a heads up.

Margaret, I guess you had a meeting on this issue. Do you have any insight we can pass back to the hill that may vitiate the need for a meeting?

Thanks,

Gregg

Gregg D. Renkes
Acting Deputy Chief of Staff / Senior Counselor to the Secretary
Department of the Interior
Office (202) 208-4043
Cell (202) 774-4833

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

From: **Ness, Torie (Tillis)** <Torie_Ness@tillis.senate.gov>
Date: Thu, Jun 13, 2019 at 11:50 AM
Subject: [EXTERNAL] Senator Tillis Upcoming Request for Assistance
To: gregg_renkes@ios.doi.gov <gregg_renkes@ios.doi.gov>
Cc: Brown, Corey (Tillis) <Corey_Brown@tillis.senate.gov>

Gregg,

Hope you're well, it's been too long!

I wanted to reach out to you to flag a request that will be coming from Senator Tillis to discuss a time-sensitive matter with Secretary Bernhardt.

The issue is relating to a recent FWS reinterpretation of CBRA waivers for sand borrowing sites. NC has two USACE coastal storm damage reduction projects that are in jeopardy as a result of this change in interpretation from FWS. These two projects are currently awaiting a

final feasibility report that will determine the future life of the projects. Senator Tillis and Senator Burr sent a letter (attached) to USACE Asst. Sec. R.D. James early this spring on the issue and Congressman Rouzer (NC) and Congressman Graves (LA) also spoke to FWS Deputy Director Everson last month. Unfortunately, a decision on the projects will soon be made and we need FWS to revisit their interpretation.

We know the Secretary is extremely busy so I wanted to flag it with you and also see if you think there is someone else at DOI who might be able to more quickly and effectively assist Senator Tillis.

Sorry for the tight turnaround on this request – we were just informed that the issue lies solely within FWS. Really appreciate any help or insight can lend.

Let me know, thanks!

-Torie

Torie Ness

Legislative Aide

Senator Thom Tillis

202-224-6342

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,

A stylized, handwritten signature in black ink, appearing to read 'RB' followed by a horizontal line.

Richard Burr
United States Senator

A handwritten signature in blue ink, reading 'Thom Tillis' in a cursive script.

Thom Tillis
United States Senator

From: [Beaumont, Melissa](#)
To: [Katie Mills](#); [Playforth, Taylor](#)
Subject: Fwd: CBRA sand mining amendment
Date: Thursday, June 13, 2019 8:08:36 PM

FYI

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

From: **Martin Kodis** <martin_kodis@fws.gov>
Date: Thu, Jun 13, 2019 at 7:58 PM
Subject: CBRA sand mining amendment
To: Angela Gustavson <angela_gustavson@fws.gov>, <melissa_beaumont@fws.gov>, <elizabeth_berg@fws.gov>, <laury_parramore@fws.gov>
Cc: <barbara_wainman@fws.gov>, <matthew_huggler@fws.gov>

All -

I was informed that Rep. Graves (R-LA) and Rep. Van Drew (D-NJ) will offer a floor amendment to the Interior Approps Bill that will effectively allow for sand mining from CBRA areas. I do not have the text.

Liz, please inform Katie, and Angela please let Taylor Playforth and our DOB know.

Laury/Melissa - FYI. You might want to bring it up to Margaret, as she is aware of the issue.

Not sure what the prospects are for actual floor time or successful adoption.

Marty

Sent from my iPhone

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Mills, Katie](#)
To: [Melissa Beaumont](#)
Subject: Fwd: CBRA question
Date: Tuesday, June 18, 2019 6:31:03 PM
Attachments: [\(108\) Opinion and Order re Fidelity's MSJ \(10 8 13\) \(1\).pdf](#)
[21 - Order Granting Motion to Dismiss Without Prejudice.pdf](#)

On Tue, Jun 18, 2019 at 6:05 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

Katie, this email is in response to your inquiry to Gary Frazer regarding whether FWS has any information or statistics on CBRA and our consultations. The Service receives consultation requests from other Federal agencies for proposed Federal expenditures within the Coastal Barrier Resources System (CBRS). This includes Corps shore protection projects, FEMA disaster assistance, road projects, recreational and restoration projects, etc. The number of CBRA consultation requests varies by year. Consultation responsibilities within the Service have been delegated to the regions with approximately 20 ES field offices that handle CBRA. Unfortunately, we do not currently have easily accessible metrics to answer your questions concerning the number of CBRA consultations per year and the percentage that do not qualify for an exception under CBRA. Following major storms, consultation requests tend to spike often in the hundreds of individual requests per year. The responsibility for compliance with CBRA rests with the Federal funding agency and the Service does not have veto authority over the funding agency's final decision.

You also asked whether we ever been sued for any CBRA consultation. We are only aware of one case where the Service has been sued related to a CBRA consultation. In this particular case related to sand mining in Hereford Inlet, NJ (with the CBRS), the plaintiff was the Borough of Avalon, and the defendants were the Service and the Corps. In 2017, the NJ District Court dismissed the case due to mootness and lack of standing. The related order and opinion are attached. Please note there is a recent article in the Cape May Herald stating that the Borough of Avalon, Borough of Stone Harbor, and City of North Wildwood have jointly appointed a "Special Environmental and Litigation Counsel" to allow for the option of filing another suit regarding sand mining within the CBRS. The article is available at: https://www.capemaycountyherald.com/news/government/article_bf848c12-8c5f-11e9-8bae-8b7fe3558632.html.

If you would like additional information on CBRA, please feel free to reach out to me or Ms. Katie Niemi, Coastal Barrier Coordinator.

Respectfully,

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)

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

From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Wed, Jun 12, 2019 at 10:47 AM

Subject: Fwd: CBRA question

To: Martha Balis Larsen <Martha_BalisLarsen@fws.gov>

Cc: Jonathan Phinney <jonathan_phinney@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>

Martha -- Would you have Katie or Dana pull something together in response? You can send it back to Katie directly. Just copy me and Gina so we can stay in the loop. -- gDF

Gary Frazer

Assistant Director -- Ecological Services

U.S. Fish and Wildlife Service

(202) 208-4646

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

From: **Mills, Katie** <katie_mills@ios.doi.gov>

Date: Wed, Jun 12, 2019 at 8:49 AM

Subject: CBRA question

To: Frazer, Gary <gary_frazer@fws.gov>, Melissa Beaumont

<melissa_beaumont@fws.gov>, Margaret Everson <margaret_e_everson@fws.gov>

Good morning,

Does FWS have any information or statistics on CBRA and our consultations? How many consultations we do a year? How many we provide an unfavorable opinion to, and reasoning? Have we ever been sued for any CBRA consultation? Thank you!

--

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

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--

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

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

ROBERT SPONG and KERRY SPONG	§	
	§	
V.	§	CIVIL ACTION NO. G-10-228
	§	
FIDELITY NATIONAL PROPERTY AND	§	
CASUALTY INSURANCE COMPANY,	§	
ET AL.	§	

OPINION AND ORDER

Before the Court, with the consent of the Parties under 28 U.S.C. § 636(c), is the Motion for Summary Judgment of Defendants, Fidelity National Property and Casualty Insurance Company and Fidelity National Services (collectively, Fidelity); the Motion seeks the dismissal of all claims asserted against Fidelity by Plaintiffs, Robert and Kerry Spong, as preempted or barred by federal law. The Motion has been fully briefed and argued and is ripe for a determination. Accordingly, the Court now issues this Opinion and Order.

In February 2006, the Spongs entered into a contract to purchase an elevated home in the Caplan Shores Subdivision located on the Bolivar Peninsula in Galveston County, Texas. A prerequisite for their mortgage loan was that the property be insured against flood loss. The only reasonably affordable flood insurance available in the area of the property was through the National Flood Insurance Program. The Spongs contacted the Crystal Beach Insurance Agency (CBIA) and an application for flood insurance was submitted to Fidelity. Unfortunately, for the Spongs, the home they sought to buy was located within the boundaries of the John A. Chafee Coastal Barrier Resources System (CBRS) and, therefore, uninsurable under the program. The Spongs knew nothing about the CBRS, however, Fidelity had express notice, as early as February

22, 2006, that the home was located within its boundaries. Nevertheless, on the basis of a letter from the United States Fish & Wildlife Services (FWS), dated April 15, 2004, Fidelity issued a Standard Flood Insurance Policy (SFIP) to the Spongs effective March 15, 2006; the policy, when issued, was void. On March 16, 2006, the Spongs closed on the home, but they would not have been allowed to do so without the issuance of the policy.

On June 30, 2006, FEMA notified Fidelity that the policy had been determined to be invalid because the property was located within the CBRS, but Fidelity did not notify the Spongs. Instead, Fidelity challenged FEMA's determination on three separate occasions by submitting letters from the FWS that the property was not within the CBRS. On November 13, 2006, Fidelity received another notice, from a third-party service provider, that the property was within the CBRS; once again, Fidelity failed to notify the Spongs. At some point, FEMA revoked, for the final time, its designation of invalidity. The Spongs renewed the policy in 2007 and 2008 and paid the annual premiums.

In September 2008, the Spongs' home was completely washed away by the flooding caused during Hurricane Ike. The Spongs submitted a Proof of Loss claiming \$208,300.00 under the SFIP. Fidelity investigated the claim and, in January 2009, concluded the property was, after all, within the CBRS. That finding was confirmed by the FWS, at the request of Fidelity, in an opinion letter dated September 25, 2009. On October 14, 2009, Fidelity denied the claim, cancelled the policy as void from its inception and refunded all premiums to the Spongs. Apparently, at no time prior the cancellation, were the Spongs given any notice of the CBRS dispute between Fidelity and FEMA.

On May 10, 2010, the Spongs filed suit in state court asserting numerous state law tort and statutory violations. Fidelity removed the case to this Court on June 14, 2010. The Spongs sought a remand claiming there was no federal jurisdiction because their suit involved only the procurement of their original policy, however, this Court found that because federal funds were, at least, at risk jurisdiction was present. In 2011, CBIA filed for bankruptcy and all claims asserted against it were severed. On October 15, 2012, the Spongs filed an Amended Complaint which joined the United States as a party due to the allegedly negligent actions of FEMA and FWS. Fidelity now seeks summary judgment.

In Campo v. Allstate Insurance Co., 562 F.3d 751 (5th Cir. 2009), the Fifth Circuit held that federal law does not preempt state law claims grounded on misrepresentations made by a private insurance company acting as a WYO participant during the Plaintiff's initial procurement of coverage under an SFIP. The Court gave two reasons for its decision. First it interpreted FEMA's regulation¹ which reads, "This policy and all disputes arising from the handling of any claims under the policy are governed exclusively by" FEMA regulations, to mean that FEMA "expressly preempted state law only as to handling-related claims." Second, it found that permitting the prosecution of procurement-related state law claims against a WYO company would not impede the Congressional purposes and objectives of the NFIP since "FEMA does not reimburse carriers for procurement-related judgments" because such claims do not involve the interpretation or management of an existing SFIP, but are "grounded on actions taken by the

¹ 44 C.F.R. Pt. 61, App. A(1), Art. IX

[WYO] Company that are significantly outside the scope of (the) Arrangement” with FEMA to administer the flood program.

Campo, at present, is binding authority in this Circuit, but the Court suspects that the Fifth Circuit, if afforded the opportunity to revisit Campo, will most likely overrule it in light of FEMA’s prompt adverse reaction. Just four months after the publication of Campo, FEMA’s acting Federal Insurance Administrator issued a Memorandum critical of the Campo opinion. The Memorandum, entitled “Notice of FEMA’s Intent to Adopt, by Regulation, a Clarification of the Current Express Preemption Clause of the Standard Flood Insurance Policy” declared, *inter alia*, that

FEMA *previously* understood and *intended* its regulations to preempt state law claims related to policy *formation* . . . FEMA *understood* and *intended* preemption to apply, particularly where there is a conflict with a Federal regulation on the manner in which policies were administered, and *also* had expressly preempted state law related to claims handling . . . FEMA will review its regulations to determine *whether* clarification is required to fully implement its *intended* scope of preemption. (emphasis added)

Clearly, FEMA’s interpretation of its own regulation differed from that made by the Fifth Circuit. While the Circuit’s interpretation may have been a reasonable one at the time, “a court must necessarily look toward the administrative construction of the regulation if the meaning is in doubt . . . [T]he ultimate criterion is the administrative interpretation which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.” Udall v. Tallman, 380 U.S. 1, 17 (1965) (quoting Bowles v. Seminole Rock Co., 325 U.S. 410, 413-14 (1945), *see also*, Lyng v. Payne, 476 U.S. 926, 939 (1986) (An agency’s construction of its own regulations is entitled to substantial difference.) Since FEMA’s now-clarified, but preexisting, interpretation does not appear to this Court to be clearly erroneous or inconsistent with the regulation, its

construction of the regulation is entitled to great deference even though it differs from the construction reached “in the first instance in judicial proceedings.” Unemployment Compensation Commission of Territory of Alaska, et al. v. Aragan, et al., 329 U.S. 143, 153 (1946)

Other courts have rejected the reasoning in Campo. In Remund v. State Farm Fire and Casualty Co., 483 F. Appx. 403, 408 n.3 (10th Cir. 2012), the Court expressly refused to follow Campo and held that plaintiff’s state-law claims related to pre-issuance misrepresentations of the SFIP’s scope of coverage were preempted. In Moffett v. Computer Sciences Corp., 457 F.Supp. 2d 571, 587 (D. Md. 2006), the District Court deferred to FEMA’s opinion and found that procurement fraud claims were preempted. In fact, the Fifth Circuit, itself, recently looked to this exact FEMA Memorandum to discern the agency’s regulatory intent on another matter. In Grissom v. Liberty Mutual Insurance Co., 678 F.3d 397, 401 n.2 (5th Cir. 2012), the Fifth Circuit found that the “renewal” of an SFIP is not the “procurement” of insurance and cited, with favor, the language in FEMA’s post-Campo Memorandum that its regulations preempt “state law claims related to policy formation, *renewal, and administration arising from allegations of WYO company error.*” (emphasis in original) Given the dispute at issue in Grissom, it appears the Court saw no need to emphasize FEMA’s inclusion of “*policy formation*” in the Memorandum while noting “the agency’s intent that federal preemption apply to renewals of flood insurance and other activities which occur after the initial policy is procured.” Regardless, this Court does not believe that Campo will survive reexamination by the Fifth Circuit.

Unfortunately, for Fidelity, at this time Campo controls. In this Circuit a panel decision of the Court of Appeals is binding on a District Court. Burlington Northern Railroad Co. v. BMW, 961 F.2d 86, 89 (5th Cir. 1992) Moreover, one appellate panel “may not overrule the

decision, right or wrong, of a prior panel in the absence of en banc consideration or a superceding decision of the Supreme Court,” Pruitt v. Levi Straus & Co., 932 F.2d 458, 465 (5th Cir. 1991), or an intervening change in the law itself.

Perhaps the FEMA Memorandum could be construed as an intervening change in the law by a controlling authority allowing this Court to decide the scope of FEMA’s intended preemption of procurement-related claims anew. However, such a proposition is unpersuasive. First, as far as FEMA is concerned, there has been no “change” in the law; FEMA had already intended preemption to apply to procurement-related claims before Campo was decided. Second, although FEMA expressed an intent to adopt a regulation clarifying the express preemption clause of the SFIP, it has not done so; presumably, because, after review, it concluded that, despite Campo, no clarification was necessary. While the Memorandum is some authority, Cf. Stinson v. United States, 508 U.S. 36 (1993) (holding that amendments to the Commentary of the United States Sentencing Guidelines, promulgated in lieu of formal amendment of the Guideline provisions, made while the case was on appeal, were binding on the federal appellate court despite prior judicial construction to the contrary), this Court cannot, in good conscience, rely upon it to justify ignoring the binding effect of the Campo decision.

As an alternative to ignoring Campo, Fidelity argues that a line of Supreme Court cases, most notably Heckler v. Community Health Services, 467 U.S. 51 (1984), bar plaintiff’s procurement-related claims on other grounds. According to Fidelity, the Court held in Heckler that insureds participating in a federal insurance program have a legal duty to learn the rules governing the program for themselves and, therefore, cannot sue a fiscal agent of the United States, assisting in the administration of the program, for misrepresentations which caused the

plaintiffs to suffer otherwise actionable harm. But a close reading of Heckler gives this Court pause. Heckler involved a defendant who had received over \$71,000.00 of undeserved Medicare reimbursements from the Government based upon non-binding misrepresentations of the applicable reimbursement policies by Travelers Insurance Company, acting as a fiscal intermediary. After the Secretary of Health and Human Services reopened the defendant's reimbursement determination and discovered the error, she sued to recover the three years of overpayments. The Supreme Court barred the defendant's estoppel defense, despite the obvious and substantial adverse affects on the defendant's business, because, *inter alia*, federal funds were involved, the defendant received money "it should never have received in the first place" and the defendant "lost no rights but merely was induced to do something which could be corrected at a later time." The Supreme Court, however, stopped short of making its holding in Heckler universal: "we are hesitant, when it is unnecessary to decide this case, to say that there are *no cases* in which the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government." (emphasis in original) Id. at 60-61 n.12 and 13; see Brandt v. Hickel, 427 F.2d 53, 57 (9th Cir. 1970) ("To say to these appellants, 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great government.")

This might be just such a case. Here, Fidelity negligently issued an insurance policy it should never have issued. The commitment, bestowed by Fidelity upon CBIA, to issue the policy was a deciding factor in the Plaintiffs' purchase of the house at, no doubt, a substantial cost to them. The ultimate invalidation of their policy is not just a denial of the "right" to receive money they "should never have received in the first place," the Plaintiffs now have an economically

uninsurable piece of property that, if marketable at all, has nowhere near the value they paid for it in 2006, and, presumably, they still owe the balance of the mortgage. This is not a situation that can “be corrected at a later time”; the Plaintiffs damages are permanent and directly attributable to their reliance on the alleged misconduct of the government’s fiscal agent. It hardly seems just, or decent, to condone the result Fidelity asks the Court to impose in its Motion and, on these facts, the Court cannot do so.

For all of the foregoing reasons, it is **ORDERED** that the Motion for Summary Judgment (Instrument no. 96) of Defendants, Fidelity National Property and Casualty Insurance Company and Fidelity National Services, is **DENIED**.

This Court **WILL** consider permitting Fidelity, upon timely application under 28 U.S.C. § 1292(b), to seek authorization from the Fifth Circuit to prosecute an Interlocutory Appeal of this ruling. Whether procurement-related claims brought against a WYO carrier are preempted by federal law “involves a controlling question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from (this) Order (denying the Defendant’s Motion for Summary Judgment) may materially advance the ultimate determination of (this) litigation” and future litigation which will, most likely, arise with some regularity in the aftermath of catastrophic hurricanes.

DONE at Galveston, Texas, this 8th day of October, 2013.



John R. Froeschner
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BOROUGH OF AVALON,

Plaintiff,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS and UNITED STATES
DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE

Defendants.

HONORABLE JEROME B. SIMANDLE

Civil Action
16-8057 (JBS/KMW)

ORDER

This matter having come before the Court on Defendants United States Army Corps of Engineers and United States Department of the Interior, Fish and Wildlife Service's motion to dismiss [Docket Item 15]; the Court having considered the submissions of the parties; for the reasons explained in the Opinion of today's date; and for good cause shown;

IT IS this 6th day of September, 2017, hereby

ORDERED that Defendants' motion to dismiss [Docket Item 15] shall be, and hereby is, **GRANTED** without prejudice, due to mootness and lack of standing.

s/ Jerome B. Simandle
JEROME B. SIMANDLE
U.S. District Judge

From: [Gustavson, Angela](#)
To: [Martin Kodis](#)
Cc: [Melissa Beaumont](#); [Elizabeth Berg](#); [Laury Parramore](#); [Barbara Wainman](#); [Matthew Huggler](#)
Subject: Re: CBRA sand mining amendment
Date: Thursday, June 20, 2019 12:31:14 PM

Hi all,

I heard that Van Drew withdrew his amendment related to our Solicitor's opinion and sand mining.

Angela

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

On Thu, Jun 13, 2019 at 7:58 PM Martin Kodis <martin_kodis@fws.gov> wrote:

All -

I was informed that Rep. Graves (R-LA) and Rep. Van Drew (D-NJ) will offer a floor amendment to the Interior Approps Bill that will effectively allow for sand mining from CBRA areas. I do not have the text.

Liz, please inform Katie, and Angela please let Taylor Playforth and our DOB know.

Laury/Melissa - FYI. You might want to bring it up to Margaret, as she is aware of the issue.

Not sure what the prospects are for actual floor time or successful adoption.

Marty

Sent from my iPhone

From: [Playforth, Taylor](#)
To: [Beaumont, Melissa](#)
Cc: [Katie Mills](#)
Subject: Re: CBRA sand mining amendment
Date: Thursday, June 20, 2019 3:55:39 PM

Got it, thanks.

On Thu, Jun 20, 2019 at 3:41 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
FYI

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

From: **Gustavson, Angela** <angela_gustavson@fws.gov>
Date: Thu, Jun 20, 2019 at 12:31 PM
Subject: Re: CBRA sand mining amendment
To: Martin Kodis <martin_kodis@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Elizabeth Berg
<elizabeth_berg@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Barbara
Wainman <barbara_wainman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>

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Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
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Mobile: 202-909-5105
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Marty

Sent from my iPhone

--

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

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

From: [Wright, Dana](#)
To: [Mills, Katie](#)
Cc: [BalisLarsen, Martha](#); [Gina Shultz](#); [Katie Niemi](#); [Melissa Beaumont](#); [Margaret Everson](#); [Gary Frazer](#)
Subject: Follow up information on CBRA
Date: Tuesday, June 25, 2019 8:32:33 AM
Attachments: [1.8.1992 DOT Certification of Compliance with CBRA.pdf](#)
[3.6.1995 DOT Certification of Compliance.pdf](#)
[FIFM TF Consensus Recommendations-Signed CBRA Highlights.pdf](#)
[Corps Dredging Consultation - CBRS Unit L09.zip](#)
[Example of 90s Era CBRS Maps.pdf](#)

Hi Katie,

Thanks again for your time last Wednesday, I'm glad that we were able to answer the majority of your questions. Per your request, I have attached a number of documents relating to the bullets below.

- There has been only one consultation that we are aware of where a federal agency has proceeded with funding a project in the CBRS that the Service did not think was allowable under an exception to CBRA. A zip file containing the CBRA consultation letters between the Service and the Corps' Wilmington District for that dredging and beach nourishment project is attached. In that case, the two agencies essentially agreed to disagree; the matter was not resolved. The Corps completed the dredging.
- You asked about CBRA's statutory requirement (16 USC 3506(b)) that federal agencies certify their compliance with CBRA annually to the Secretary. The only two certifications of compliance (from DOT in the 1990's) that we have on record are attached. In 2013, the [Federal Interagency Floodplain Management Task Force](#) addressed this issue with the attached memo. Sections directly relating to CBRA are highlighted. Our focus in recent years has been on our CBRA map modernization efforts which are also noted in the Task Force memo. We were awarded funding for our Hurricane Sandy remapping project for 9 northeastern states late in 2013.
- The old CBRS maps have been extremely problematic and, among other things, contributed to challenges with CBRA compliance for both the National Flood Insurance Program and other federal programs. An example of one of those old and difficult to read maps is attached. We updated the base maps for 93% of the CBRS in recent years through our digital conversion project with FEMA, and now have digital boundaries for 100% of the CBRS. We first launched a [CBRS Mapper](#) in 2012.

As we noted on the phone, metrics related to CBRA consultations can be challenging. We have a national database that contains project consultation information, but tracking CBRA data in that database is not mandatory for our field offices. **Therefore, the numbers we obtained likely under-report the total volume of CBRA consultations.** We found over 800 CBRA consultations in the database that were completed between 2006-2019. On average, the database showed about 60 CBRA consultation requests per year, with spikes following major storms and wide variability in quantity by state. Most of the project consultations in the database are from Florida, North Carolina, and Louisiana. We do not have reliable data on how many of those did not meet a CBRA exception (or the rationale). Less than 20% of the records in the database contain data on that one way or the other. However, based on our experience, most of the projects we are consulted on meet an exception.

You asked about how often our field offices are checking the last box on our [interagency consultation template](#) that provides no comment. We checked in with the three regions that have done CBRA consultations in the last two years since the template was created. Our northeast region completed about six consultations in that time, and checked the "no comment" box for all of them. Our southeast region has completed about 18 consultations in that time and has checked the "no comment" box for about half of them. Our southwest region (which only has CBRS units in Texas) has completed four and has not used the "no comment" box at all.

Lastly, we realized that there was one question in your email that we did not get to on the phone. You asked about whether there were cases where our position changed on a consultation. We are not aware of any cases where the Service has provided an opinion that a project is allowable and then later changed its position for the same project (without a scope or design change). However, in cases where a project does not initially meet a CBRA exception under its original scope and/or design, the Service can occasionally work with the funding agency to make changes to the project to align it with an exception. For example, if a proposed road repair project also includes an expansion (e.g. a new lane) which is not allowable under CBRA, a modification to the project design could be made to remove the new lane and only complete the repair portion of the project. However, this approach does not work in all cases.

Please let us know if you have further questions.

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, Jun 19, 2019 at 12:17 PM Mills, Katie <katie_mills@ios.doi.gov> wrote:

Great! Thank you so much!

On Wed, Jun 19, 2019 at 12:12 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

Katie, unfortunately, we don't have a centralized system for tracking CBRA consultations so Katie Niemi and Dana Wright are polling the regions to get the information from the field ASAP. I understand that you have reached out to Katie Niemi to discuss the background related to some CBRA letters so she can give you an update then on when we will have the information for you.

Martha

On Tue, Jun 18, 2019 at 6:46 PM Mills, Katie <katie_mills@ios.doi.gov> wrote:

Thank you. Because that data should be public record, can you give me the metrics or whatever information the Service has related to my questions on CBRA and consultations? Also, has the Service ever provided an opinion that an exception does not apply, and the federal funding agency proceeded with the action anyway?

Can you give me the details about that particular instance in the article? Prior to 2016 dredging was allowed, what changed? How often has a circumstance like that occurred, where the Service had one determination, and then that position changed? Can you give me some specific instances? Were the maps re-drawn in those instances?

How soon do you think you can get this information to me? Thanks!

Katie

On Tue, Jun 18, 2019 at 6:05 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

Katie, this email is in response to your inquiry to Gary Frazer regarding whether FWS has any information or statistics on CBRA and our consultations. The Service receives consultation requests from other Federal agencies for proposed Federal expenditures within the Coastal Barrier Resources System (CBRS). This includes Corps shore protection projects, FEMA disaster assistance, road projects, recreational and restoration projects, etc. The number of CBRA consultation requests varies by year. Consultation responsibilities within the Service have been delegated to the regions with approximately 20 ES field offices that handle CBRA. Unfortunately, we do not currently have easily accessible metrics to answer your questions concerning the number of CBRA consultations per year and the percentage that do not qualify for an exception under CBRA. Following major storms, consultation requests tend to spike often in the hundreds of individual requests per year. The responsibility for compliance with CBRA rests with the Federal funding agency and the Service does not have veto authority over the funding agency's final decision.

You also asked whether we ever been sued for any CBRA consultation. We are only aware of one case where the Service has been sued related to a CBRA consultation. In this particular case related to sand mining in Hereford Inlet, NJ (with the CBRS), the plaintiff was the Borough of Avalon, and the defendants were the Service and the Corps. In 2017, the NJ District Court dismissed the case due to mootness and lack of standing. The related order and opinion are attached. Please note there is a recent article in the Cape May Herald stating that the Borough of Avalon, Borough of Stone Harbor, and City of North Wildwood have jointly appointed a "Special Environmental and Litigation Counsel" to allow for the option of filing another suit regarding sand mining within the CBRS. The article is available at: https://www.capemaycountyherald.com/news/government/article_bf848c12-8c5f-11e9-8bae-8b7fe3558632.html.

If you would like additional information on CBRA, please feel free to reach out to me or Ms. Katie Niemi, Coastal Barrier Coordinator.

Respectfully,

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)

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

From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Wed, Jun 12, 2019 at 10:47 AM
Subject: Fwd: CBRA question
To: Martha Balis Larsen <Martha_BalisLarsen@fws.gov>
Cc: Jonathan Phinney <jonathan_phinney@fws.gov>, Gina Shultz
<Gina_Shultz@fws.gov>

Martha -- Would you have Katie or Dana pull something together in response? You can send it back to Katie directly. Just copy me and Gina so we can stay in the loop. -
- gDF

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

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

From: **Mills, Katie** <katie_mills@ios.doi.gov>
Date: Wed, Jun 12, 2019 at 8:49 AM
Subject: CBRA question
To: Frazer, Gary <gary_frazer@fws.gov>, Melissa Beaumont
<melissa_beaumont@fws.gov>, Margaret Everson <margaret_e_everson@fws.gov>

Good morning,

Does FWS have any information or statistics on CBRA and our consultations? How many consultations we do a year? How many we provide an unfavorable opinion to, and reasoning? Have we ever been sued for any CBRA consultation? Thank you!

--

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

--

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

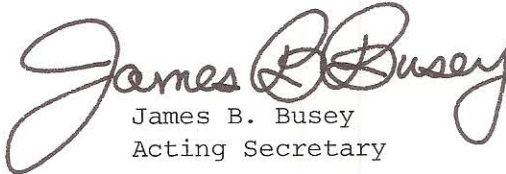
January 8, 1992

The Honorable Manuel Lujan, Jr.
Secretary of the Interior
Washington, D.C. 20503

Dear Mr. Secretary:

In accordance with the Coastal Barrier Improvement Act of 1990, I
certify that the Department of Transportation is in compliance
with the provisions of the Act.

Sincerely,


James B. Busey
Acting Secretary

RECEIVED

1992 JAN 10 10:50

DEPT OF INTERIOR

2250



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

March 6, 1995

102275

The Honorable Bruce C. Babbitt
Secretary of the Interior
Washington, D.C. 20503

Dear Mr. Secretary:

In accordance with the Coastal Barrier Resources Act, I
certify that the Department of Transportation is in compliance
with the provisions of the Act.

Sincerely,

A handwritten signature in cursive script, reading "Federico Peña", is written over a horizontal line.

Federico Peña



**Federal Emergency
Management Agency**



**Assistant Secretary of the Army
(Civil Works)**

TO: Federal Interagency Floodplain Management Task Force Member Agencies

SUBJECT: FIFM Task Force Consensus Recommendations and Actions from a Federal Floodplain Management Policy Analysis

The Federal Interagency Floodplain Management (FIFM) Task Force was formed to promote, support, and encourage Federal agencies to formulate and implement programs and policies that: 1) reduce the loss of life and property caused by floods; and 2) protect and restore natural resources and functions of floodplains. It does this primarily through improving coordination, collaboration, and transparency among the federal agencies in floodplain management efforts; conducting studies of floodplain management activities; and improving alignment of federal programs.

The Task Force has already made progress in carrying out this mission. Specifically, it has:

- Convened a listening session with key stakeholders to identify and refine floodplain management issues and priorities.
- Developed guidance for Federal agencies on unwise use of floodplains.
- Conducted research on policies and programs that promote or interfere with good floodplain management practices.
- Made numerous presentations at floodplain and flood risk management events to exchange information relevant to the work of the Task Force.

The Task Force has also provided a forum for enhanced coordination and action on the part of individual member agencies. For example:

- U.S. Army Corps of Engineers (Corps) and Federal Emergency Management Agency (FEMA) have jointly resolved several policy conflicts, including accounting for the National Flood Insurance Program requirements of 44 CFR 65.12 during Corps evaluation of flood risk management projects in the floodplain. Guidance has been distributed to the field offices of both agencies through jointly signed memorandums.
- The Corps has coordinated its Flood Risk Management and Silver Jackets Programs with FEMA's Community Rating System Program to encourage and assist communities in taking responsible steps to better manage their flood risk.
- FEMA and the U.S. Fish and Wildlife Service (FWS) have updated an existing Interagency Agreement to place Coastal Barrier Resources System (CBRS) boundaries on Flood Insurance Rate Maps (FIRMs) and established a new Interagency Agreement to facilitate a digital conversion of the official CBRS maps and make changes that are necessary as a result of erosion and accretion.

At its meeting on July 27, 2012, the FIFM Task Force identified several opportunities and activities to enhance floodplain management efforts at various levels of government and to help agencies become better stewards of public resources. These activities were developed collaboratively by the Working Group of the Task Force, an interagency group with 19 representatives from the following agencies:

- U.S. Army Corps of Engineers
- Federal Emergency Management Agency
- National Oceanic and Atmospheric Administration
- U.S. Environmental Protection Agency
- U.S. Department of Transportation
- Tennessee Valley Authority
- U.S. Department of the Interior
- U.S. Department of Agriculture
- U.S. Department of Defense
- U.S. Department of Housing and Urban Development
- General Services Administration
- White House Council on Environmental Quality (Advisor)

Some of these activities are recommendations to one or more federal agencies. Others describe actions that the Task Force will take and incorporate into its overall work plan to be carried out over the next 3-4 years. Some activities will involve further action by numerous federal agencies, while others are informational in nature. These opportunities and activities are categorized into four areas and are described below.

Compliance

- **Enhance Coastal Barrier Resources Act (CBRA) Compliance.** Federal agencies operating under CBRA (16 U.S.C. 3501 et seq.), are required to comply with its provisions, which are designed to restrict federal expenditures and financial assistance in the development of coastal barriers designated as part of the CBRS. Section 3506(b) of CBRA also requires that each federal agency affected by CBRA report and certify annually to the Department of the Interior (DOI) that the agency is in compliance with the law. Federal agencies have not issued such certifications in recent years. DOI will issue a memorandum to federal agencies to remind them of their obligations under CBRA and request that they provide DOI with an annual letter certifying their compliance with the law, as appropriate. The Task Force recommends that federal agencies respond to DOI's request to help raise awareness about CBRA requirements and ensure that sufficient policies and protocols are in place to prevent the inappropriate provision of federal financial assistance within the CBRS.
- **Assess and Enhance Executive Order (EO) 11988 Compliance.** A recent study conducted by the Task Force indicated that implementation of *Executive Order 11988: Floodplain Management* may not be consistent across the federal government. Effective and consistent implementation of the EO will save lives and property, reduce the economic and environmental impacts of flooding in communities, and reduce costs to taxpayers across the country. Given the impacts of more extreme precipitation events anticipated as a result of climate change, flood losses will likely increase, thus further highlighting the importance of EO 11988. To address this issue, the Task Force will draft a memorandum for CEQ's consideration and issuance, requesting federal agencies that have adopted regulations and implementing guidance to assess their EO compliance and effectiveness of compliance and to take appropriate action where necessary. The Task Force will work with CEQ to assess responses.

Tools/Technology/Data

- **Modernize Coastal Barrier Resource System (CBRS) Maps.** Many of the maps that delineate CBRS boundaries require updates in light of natural changes to the system that occur over time and to be consistent with current technology. Digitizing and modernizing these maps will help all federal agencies responsible for CBRA compliance as well as developers, surveyors, planners, floodplain managers, realtors and other stakeholders who need to know the exact location of the CBRS unit boundaries. Homeowners, in particular, will have a clearer understanding of whether their property is located within the CBRS, so they can more accurately determine whether they are eligible for federal financial assistance, including flood insurance – avoiding the discovery and cancellation of invalid flood insurance policies after claims are made. The Task Force recognizes the value of the modernization efforts already underway and recommends that they be continued and expanded.

- **Enhance Technical Assistance to Communities in Coastal Areas.** Coastal areas are home to over 160 million people, support 66 million jobs and contribute \$8.3 trillion to the U.S. economy. These areas are also prone to a number of natural hazards. As a result, it is critical that we provide coastal communities with the resources they need to make better decisions that reduce flood hazards. The Task Force will be exploring broader use of the Community Rating System as an incentive mechanism for coastal communities to make better floodplain management decisions. In addition, the Task Force plans to assess floodplain management-related technical assistance available to coastal communities and identify gaps that may need to be filled.
- **Enhance Collaboration and Research on Mapping to Support Floodplain Management.** Maps are powerful tools in floodplain management. The Task Force will be working to assess and enhance data collection, distribution, collaboration and research related to mapping to support floodplain management. It will place special emphasis on identifying, quantifying or mapping the natural areas of floodplains and their beneficial uses and values.
- **Improve the Link Between Agencies and Available Floodplain-related Research Capabilities.** There are potential disconnects between agencies responsible for establishing and implementing policies that impact flood risk or floodplains and those agencies involved in scientific research and data collection. The Task Force will evaluate disconnects and establish a more formal mechanism for coordination so the available research becomes more broadly available and research needs are aligned with future research plans.
- **Assess Federal Use of Flood Loss Data and Identify Potential Improvements in Collection, Dissemination and Use.** Federal agencies are often asked to report on flood-related losses. This information is important for understanding the impacts of policies and programs in and around floodplains. Federal agencies collect and use flood loss data differently based on their missions and the needs of their stakeholders. The Task Force will convene key federal agencies to discuss what flood loss data they have, how they calculate flood losses, and how they use these data (e.g., policy questions they try to answer). The Task Force will compile this feedback to create a more comprehensive view of how flood loss data is collected, calculated and used within federal agencies and key, high-level similarities and differences. Based on this feedback, the Task Force will identify approaches for improving the collection, dissemination and/or use of flood loss data to enhance future policy decisions.
- **Study the Benefits of Protecting Natural and Beneficial Functions.** Floodplains provide more value, or services, per acre than any other land type. However, floodplains continue to be degraded by development and other activities that often cause hidden losses, both economic and environmental, for communities and the nation. The Task Force will conduct a review of existing information to assess our current state of knowledge about valuing the natural resources and functions of floodplains. Based on this assessment, the Task Force will identify opportunities to quantify and/or qualitatively describe the benefits that floodplains provide.

Partnerships

- **Improve Silver Jackets Awareness and Participation.** Silver Jackets interagency teams promote valuable collaboration among federal and state agencies with respect to flood risk management. They focus on a common set of priorities and are capable of more easily leveraging resources to solve problems. Involvement by federal agencies other than FEMA and the Corps, however, has been inconsistent. Having stronger support for Silver Jackets teams from all agencies involved in flood risk and floodplain management will provide more resources and opportunities for collaboration to the Silver Jackets teams and promote more innovative and effective approaches to flood risk management. The Task Force will prepare a memorandum to its member agencies and other


interested agencies recommending that they designate a point of contact to coordinate their involvement in the Silver Jackets program.

- **Coordinate Under Presidential Policy Directive 8 (PPD#8) Initiatives.** PPD #8 provides an opportunity to improve floodplain management by providing a partnership venue to ensure assistance is available to integrate mitigation and floodplain management into recovery, mitigation and response policies, plans, programs, and decision making. The FIFM Task Force is developing processes to ensure that it is coordinating closely with the leadership structure of the National Disaster Recovery, Mitigation, and Response Frameworks as developed under PPD #8, specifically as it relates to floodplain management.

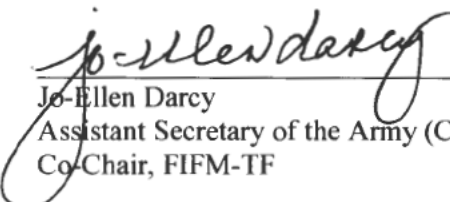
Communication

- **Promote the Task Force Role in Resolving Interagency Conflicts.** One reason the Task Force was formed was to identify and address policy or programmatic conflicts among federal agencies that may be resulting in poor floodplain management decisions. The Task Force will more actively promote its role in addressing these issues and opportunities so other members of the floodplain management community are aware of the potential resource the Task Force can offer.

As noted previously, many of the above recommendations will be merged into the Task Force's work plan. Participation by all federal agencies in support of Task Force efforts is encouraged. Please contact any member of the Task Force for further information on the work of the Task Force or its current activities.


David L. Miller
Associate Administrator, Federal Insurance and
Mitigation Administration
Co-Chair, FIFM-TF

Date: 1/24/18


Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Co-Chair, FIFM-TF

Date: Jan. 28, 2018

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CONGRESSIONAL RECORD -- *SENATE*

Wednesday, September 27, 2000

106th Congress, 2nd Session

146 Cong Rec S 9397

REFERENCE: Vol. 146, No. 117

TITLE: COASTAL BARRIER RESOURCES REAUTHORIZATION ACT OF 1999

SPEAKER: Mr. LOTT. Mr. SMITH of New Hampshire.

BILL NUMBER:

S. 1752 [Retrieve Bill Tracking Report](#)

[Retrieve full text of bill](#)

TEXT: [*S9397]

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 483, S. 1752.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1752) to reauthorize and amend the Coastal Barrier Resources Act.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public works with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coastal Barrier Resources Reauthorization Act of 1999".

SEC. 2. DEFINITIONS.

Section 3 of the Coastal Barrier Resources Act (16 U.S.C. 3502) is amended--

(1) by striking "For purposes of" and all that follows through the end of paragraph (1) and inserting the following:

"In this Act:

"(1) Undeveloped coastal barrier.--

"(A) In general.--The term undeveloped coastal barrier' means--

"(i) a geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that--

"(I) is subject to wave, tidal, and wind energies; and

"(II) protects landward aquatic habitats from direct wave attack; and

"(ii) all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

"(B) Exclusions.--The term undeveloped coastal barrier' excludes a feature or habitat described in subparagraph (A) if, as of the date on which the feature or habitat is added to the System--

"(i) the density for the unit in which the feature or habitat is located is equal to or greater than 1 structure per 5 acres of land above the mean high tide, which structure--

"(I) is a walled and roofed building (other than a gas or liquid storage tank) that is principally above ground and affixed to a permanent site, including a manufactured home on a permanent foundation; and

"(II) covers at least 200 square feet; or

"(ii) the feature or habitat contains infrastructure consisting of--

"(I) a road, to each lot or building site, that is under the jurisdiction of, and maintained by, a public authority and is open to the public;

"(II) a wastewater disposal system for each lot or building site;

"(III) electric service for each lot or building site; and
"(IV) availability of a fresh water supply for each lot or building site.";

(2) in paragraph (2), by striking "refers to the Committee on Merchant Marine and Fisheries" and inserting "means the Committee on Resources"; and

(3) in paragraph (3), by striking the second sentence.

SEC. 3. VOLUNTARY ADDITIONS TO COASTAL BARRIER RESOURCES SYSTEM.

SEC. 3. VOLUNTARY ADDITIONS TO JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM.

(a) In General.--Section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503) is amended by adding at the end the following:

"(d) Additions to System.--

"(1) In general.--The Secretary may add a parcel of real property to the System, if--

"(A) the owner of the parcel requests, in writing, that the Secretary add the parcel to the System; and

"(B) the parcel is a feature or habitat covered by section 3(1).

"(2) Maps.--The Secretary shall--

"(A) keep a map showing the location of each parcel of real property added to the System under paragraph (1) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service and in such other offices of the Service as the Director considers appropriate;

"(B) provide a copy of the map to--

"(i) the State in which the property is located;

"(ii) the Committees; and

"(iii) the Federal Emergency Management Agency; and

"(C) revise the maps referred to in subsection (a) to reflect each addition of real property to the System under paragraph (1), after publishing in the Federal Register a notice of any such proposed revision."

[*S9398]

(b) Conforming Amendment.--Section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)) is amended by striking "which shall consist of" and all that follows and inserting the following: "which shall consist of those undeveloped coastal barriers and other areas located on the

coasts of the United States that are identified and generally depicted on the maps on file with the Secretary entitled 'Coastal Barrier Resources System', dated October 24, 1990, as those maps may be modified, revised, or corrected under--

"(1) subsection (c) or (d);

"(2) section 4 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591); or

"(3) any other provision of law enacted on or after November 16, 1990, that specifically authorizes the modification, revision, or correction.".

SEC. 4. TECHNICAL AMENDMENTS.

(a) In General.--Sections 10 and 11 of the Coastal Barrier Resources Act (16 U.S.C. 3509, 96 Stat. 1658) are repealed.

(b) Effect on Prior Amendments.--Nothing in subsection (a) or the amendments made by subsection (a) affects the amendments made by section 11 of the Coastal Barrier Resources Act (96 Stat. 1658), as in effect on the day before the date of enactment of this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

The Coastal Barrier Resources Act is amended by striking section 12 (16 U.S.C. 3510) and inserting the following:

"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Secretary to carry out this Act \$2,000,000 for each of fiscal years 2001 through 2004 and \$3,000,000 for each of fiscal years 2005 through 2007.".

SEC. 6. DIGITAL MAPPING PILOT PROJECT.

(a) In General.--

(1) Project.--The Secretary of the Interior (referred to in this section as the "Secretary") shall carry out a pilot project to determine the feasibility and cost of creating digital versions of the Coastal Barrier Resources System John H. Chafee Coastal Barrier Resources System maps referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)) (as amended by section 3(b)).

(2) Minimum number of units.--The pilot project shall consist of the creation of digital maps for at least 75 units of the Coastal Barrier Resources System John H. Chafee Coastal Barrier Resources System (referred to in this section as the "System"), 25 of which shall be otherwise protected areas (as defined in section 12 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591)).

(b) Data.--

(1) Use of existing data.--To the maximum extent practicable, in carrying out the pilot project under this section, the Secretary shall use--

(A) digital spatial data (including digital orthophotos) in existence at the time at which the project is carried out;

(B) shoreline, elevation, and bathymetric data; and

(C) electronic navigational charts in the possession of other Federal agencies, including the United States Geological Survey and the National Oceanic and Atmospheric Administration.

(2) Provision of data by other agencies.--The head of a Federal agency that possesses data or a chart referred to in paragraph (1) shall, upon request of the Secretary, promptly provide the data or chart to the Secretary at no cost.

(3) Additional data.--If the Secretary determines that data or a chart necessary to carry out the pilot project under this section does not exist, the Secretary shall enter into an agreement with the Director of the United States Geological Survey under which the Director shall obtain, in cooperation with other Federal agencies, as appropriate, and provide to the Secretary the data or chart required to carry

out this section.

(4) Data standards.--All data and charts used or created to carry out this section shall comply with--

(A) the National Spatial Data Infrastructure established by Executive Order 12906 (59 Fed. Reg. 17671 (1994)); and

(B) any other standards established by the Federal Geographic Data Committee established by the Office of Management and Budget Circular A-16.

(c) Digital Maps Not Controlling.--Any determination as to whether a location is inside or outside the System shall be made without regard to the digital maps created under this section.

(d) Report.--

(1) In general.--Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report that describes the results of the pilot project and the feasibility, data needs, and costs of completing digital maps for the entire System.

(2) Contents.--The report shall include a description of--

(A) the cooperative agreements that would be necessary to complete digital mapping of the entire System;

(B) the extent to which the data necessary to complete digital mapping of the entire System are available;

(C) the need for additional data to complete digital mapping of the entire System;

(D) the extent to which the boundary lines on the digital maps differ from the boundary lines of the original maps; and

(E) the amount of funding necessary to complete digital mapping of the entire System.

(e) Authorization of Appropriations.--There is authorized

to be appropriated to the Secretary to carry out this section \$500,000 for each of fiscal years 2001 through 2003.

SEC. 7. ECONOMIC ASSESSMENT OF COASTAL BARRIER RESOURCES SYSTEM.

SEC. 7. ECONOMIC ASSESSMENT OF JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM.

(a) In General.--Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives an economic assessment of the Coastal Barrier Resources System John H. Chafee Coastal Barrier Resources System.

(b) Required Elements.--The assessment shall consider the past and estimated future savings of Federal expenditures attributable to the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), including the savings resulting from avoidance of Federal expenditures for--

(1) disaster relief under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(2) the national flood insurance program established under chapter 1 of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.); and

(3) development assistance for roads, potable water supplies, and wastewater infrastructure.

Mr. LOTT. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

Amendment No. 4272

Mr. LOTT. Mr. President, Senator Bob Smith has a substitute amendment at the desk and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi Mr. Lott , for Mr. Smith of New Hampshire, proposes an amendment numbered 4272.

(The text of the amendment is printed in today's Record under "Amendments Submitted.")

Mr. LOTT. I ask unanimous consent that the substitute be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4272) was agreed to.

Mr. SMITH of New Hampshire. Mr. President, I rise today to encourage my colleagues to support final passage of S. 1752, a bill to reauthorize the Coastal Barrier Resources Act, CBRA. I am offering a manager's amendment in the nature of a substitute that makes several important changes to the bill that was reported by the Committee on Environment and Public Works. These changes have been negotiated with the House Committee on Natural Resources. I believe that in adopting these changes, we will not only improve the bill, but will also ensure that this important legislation is signed into law this year.

Most people do not realize that coastal barriers are the first line of defense protecting the mainland from major storms and hurricanes. This extremely vulnerable area is under increasing pressure from development. From 1960 to 1990, the population of coastal areas increased from 80 to 110 million, and is projected to reach over 160

million by 2015. Continued development on and around coastal barriers place people, property and the environment at risk.

To address this problem Congress passed CBRA in 1982. This extremely important legislation prohibits the Federal Government from subsidizing flood insurance, and providing other financial assistance, such as beach replenishment, within the Coastal Barrier Resources System, System. Nothing in CBRA prohibits development on coastal barriers; it just gets the Federal Government out of the business of subsidizing risky development.

The law proved to be so successful that Congress expanded the Coastal Barrier System in 1990, with the support of the National Taxpayers Union, the American Red Cross, Coast Alliance and Tax Payers for Common Sense, to name just a few. The 1990 act doubled the size of the System to include coastal barriers in Puerto Rico, the U.S. Virgin Islands, the Great Lakes, and additional areas along the Atlantic and Gulf coasts. Congress also allowed the inclusion of areas that are

[*S9399]

already protected for conservation purposes, such as parks and refuges. Currently the system is comprised of 3 million acres and 2,500 shoreline miles.

Development of coastal barriers decreases their ability to absorb the force of storms and buffer the mainland. The devastating floods of Hurricane Floyd are a reminder of the susceptibility of coastal development to the power of nature. The Federal Emergency Management Agency reports that 10 major disaster declarations were issued for this hurricane, more than for any other single hurricane or natural disaster. In fact, 1999 sets a record for major disaster declarations--a total of 14 in that year alone. As the number of disaster declarations has crept up steadily since the 1980's, so has the cost to taxpayers. Congress has approved on average \$3.7 billion a year in supplemental disaster aid in the 1990's, compared to less than \$1 billion a year in the previous decade.

Homeowners know the risk of building in these highly threatened areas. Despite this, taxpayers are continually being asked to rebuild

homes and businesses in flood-prone areas. The National Wildlife Federation published a study that found that over 40 percent of the damage payments from the National Flood Insurance Program go to people who have had at least one previous claim. A New Jersey auto repair shop made 31 damage claims in 15 years.

At a time when climatologists believe that we are entering a period of turbulent hurricane activity after three decades of relative calm, the safety concerns associated with continued development of coastal barrier regions must also be considered. As roadway systems have not kept up with population growth, it will become increasingly difficult to evacuate coastal areas in the face of a major storm.

Beyond the economic and safety issues, another compelling reason to support the Coastal Barrier Resources Act is that it contributes to the protection of our Nation's coastal resources. Coastal barriers protect and maintain the wetlands and estuaries essential to the survival of innumerable species of fish and wildlife. Large populations of waterfowl and other migratory birds depend on the habitat protected by coastal barriers for wintering areas. Undeveloped coastal barriers also provide unique recreational opportunities, and deserve protection for present and future public enjoyment.

S. 1752, would reauthorize the act for 5 years and make some necessary changes to improve implementation. Due to the complexity of the coastal barrier maps, Congress periodically authorizes changes to the map, primarily to correct errors. In this process, we always ask the administration to determine whether or not a modification to the coastal barrier maps is "technical" in nature. This provision would require the Secretary of the Interior to use a set of criteria when making this determination. The criteria that we included in the bill is based on a rule that the administration proposed in 1982, and on guidance published in 1985.

This provision would require the Secretary to determine whether the area in question, at the time of its inclusion into the system, has more than one structure per 5 acres and a "complete set of infrastructure." Infrastructure, for the purposes of this bill, is described as a road with a reinforced roadbed, wastewater disposal system, electric service, and fresh water to each lot or building site.

If the area, at the time of its inclusion into the system, does not meet all of the criteria, the Secretary is required to find that the area is undeveloped and therefore should remain in the system.

I strongly believe this criteria is necessary because some recommendations recently made by the administration have concerned me. For example, the administration claimed in one instance that a golf cart path should be considered a road. By requiring in law that a road must contain a reinforced roadbed, Congress is indicating that we mean real roads—roads where construction work has been done by a public or private entity to ensure that the road includes surfaces, shoulders, roadsides, structures, and any traffic control devices as are necessary for safe use. This definition will preclude future golfcart paths and trails from being considered legitimate roads.

S. 1752 will also require the Secretary of the Interior to complete a pilot project to determine the feasibility of creating digital versions of the coastal barrier system maps. Digital maps would improve the accuracy of the older coastal barriers maps, and make it easier for the Department of Interior and homeowners to determine where a structure is located. Eventually, we hope that the entire system can be accessed by the Internet.

I believe that Congress should make every effort to conserve barrier islands and beaches. This legislation offers an opportunity to increase protection of coastal barriers, and at the same time, save taxpayers money. I urge my colleagues to support S. 1752.

Mr. LOTT. Mr. President, I ask unanimous consent the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1752), as amended, was read the third time and passed, as follows:

S. 1752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coastal Barrier Resources Reauthorization Act of 2000".

SEC. 2. GUIDELINES FOR CERTAIN RECOMMENDATIONS AND DETERMINATIONS.

Section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503), as otherwise amended by this Act, is further amended by adding at the end the following:

"(g) Guidelines for Certain Recommendations and Determinations.--

"(1) In general.--In making any recommendation to the Congress regarding the addition of any area to the System or in determining whether, at the time of the inclusion of a System unit within the System, a coastal barrier is undeveloped, the Secretary shall consider whether within the area--

"(A) the density of development is less than 1 structure per 5 acres of land above mean high tide; and

"(B) there is existing infrastructure consisting of--

"(i) a road, with a reinforced road bed, to each lot or building site in the area;

"(ii) a wastewater disposal system sufficient to serve each lot or building site in the area;

"(iii) electric service for each lot or building site in the area; and

"(iv) a fresh water supply for each lot or building site

in the area.

"(2) Structure defined.--In paragraph (1), the term structure' means a walled and roofed building, other than a gas or liquid storage tank, that--

"(A) is principally above ground and affixed to a permanent site, including a manufactured home on a permanent foundation; and

"(B) covers an area of at least 200 square feet.

"(3) Savings clause.--Nothing in this subsection supersedes the official maps referred to in subsection (a).".

SEC. 3. VOLUNTARY ADDITIONS TO JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM.

(a) In General.--Section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503) is amended by inserting after subsection (c) the following:

"(d) Additions to System.--The Secretary may add a parcel of real property to the System, if--

"(1) the owner of the parcel requests, in writing, that the Secretary add the parcel to the System; and

"(2) the parcel is an undeveloped coastal barrier.".

(b) Technical Amendments Relating to Additions of Excess Property.--

(1) In general.--Section 4(d) of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591)--

(A) is redesignated and moved so as to appear as subsection (e) of section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503); and

(B) is amended--

(i) in paragraph (1)--

(I) by striking "one hundred and eighty" and inserting "180"; and

(II) in subparagraph (B), by striking "shall"; and

(ii) in paragraph (2), by striking "subsection (d)(1)(B)" and inserting "paragraph (1)(B)"; and

(iii) by striking paragraph (3).

(2) Conforming amendments.--Section 4 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591) is amended--

(A) in subsection (b)(2), by striking "subsection (d) of this section" and inserting "section 4(e) of the Coastal Barrier Resources Act (16 U.S.C. 3503(e))"; and

(B) by striking subsection (f).

(c) Additions to System.--Section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503) is further amended by inserting after subsection (e) (as added by subsection (b)(1)) the following:

"(f) Maps.--The Secretary shall--

[*S9400]

"(1) keep a map showing the location of each boundary modification made under subsection (c) and of each parcel of real property added to the System under subsection (d) or (e) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service and in such other offices of the Service as the Director considers appropriate;

"(2) provide a copy of the map to--

"(A) the State and unit of local government in which the property is located;

"(B) the Committees; and

"(C) the Federal Emergency Management Agency; and

"(3) revise the maps referred to in subsection (a) to reflect each boundary modification under subsection (c) and

each addition of real property to the System under subsection (d) or (e), after publishing in the Federal Register a notice of any such proposed revision."

(d) Conforming Amendment.--Section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)) is amended by striking "which shall consist of" and all that follows and inserting the following: "which shall consist of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary entitled Coastal Barrier Resources System', dated October 24, 1990, as those maps may be modified, revised, or corrected under--

"(1) subsection (f)(3);

"(2) section 4 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591); or

"(3) any other provision of law enacted on or after November 16, 1990, that specifically authorizes the modification, revision, or correction."

SEC. 4. CLERICAL AMENDMENTS.

(a) Coastal Barrier Resources Act.--The Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.) is amended--

(1) in section 3(2) (16 U.S.C. 3502(2)), by striking "refers to the Committee on Merchant Marine and Fisheries" and inserting "means the Committee on Resources";

(2) in section 3(3) (16 U.S.C. 3502(3)), in the matter following subparagraph (D), by striking "Effective October 1, 1983, such" and inserting "Such"; and

(3) by repealing section 10 (16 U.S.C. 3509).

(b) Coastal Barrier Improvement Act of 1990.--Section 8 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591) is repealed.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 12 of the Coastal Barrier Resources Act (16 U.S.C. 3510) is redesignated as section 10, moved to appear after section 9, and amended to read as follows:

"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to the Secretary to carry out this Act \$2,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005."

SEC. 6. DIGITAL MAPPING PILOT PROJECT.

(a) In General.--

(1) Project.--The Secretary of the Interior (referred to in this section as the "Secretary"), in consultation with the Director of the Federal Emergency Management Agency, shall carry out a pilot project to determine the feasibility and cost of creating digital versions of the John H. Chafee Coastal Barrier Resources System maps referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)) (as amended by section 3(d)).

(2) Number of units.--The pilot project shall consist of the creation of digital maps for no more than 75 units and no fewer than 50 units of the John H. Chafee Coastal Barrier Resources System (referred to in this section as the "System"), 1/3 of which shall be otherwise protected areas (as defined in section 12 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101-591)).

(b) Data.--

(1) Use of existing data.--To the maximum extent practicable, in carrying out the pilot project under this section, the Secretary shall use digital spatial data in the possession of State, local, and Federal agencies including digital orthophotos, and shoreline, elevation, and bathymetric data.

(2) Provision of data by other agencies.--The head of a Federal agency that possesses data referred to in paragraph

(1) shall, upon request of the Secretary, promptly provide the data to the Secretary at no cost.

(3) Additional data.--If the Secretary determines that data necessary to carry out the pilot project under this section do not exist, the Secretary shall enter into an agreement with the Director of the United States Geological Survey under which the Director shall obtain, in cooperation with other Federal agencies, as appropriate, and provide to the Secretary the data required to carry out this section.

(4) Data standards.--All data used or created to carry out this section shall comply with--

(A) the National Spatial Data Infrastructure established by Executive Order 12906 (59 Fed. Reg. 17671 (April 13, 1994)); and

(B) any other standards established by the Federal Geographic Data Committee established by Office of Management and Budget Circular A-16.

(c) Digital Maps Not Controlling.--Any determination as to whether a location is inside or outside the System shall be made without regard to the digital maps created under this section.

(d) Report.--

(1) In general.--Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report that describes the results of the pilot project and the feasibility, data needs, and costs of completing digital maps for the entire System.

(2) Contents.--The report shall include a description of--

(A) the cooperative agreements that would be necessary to complete digital mapping of the entire System;

(B) the extent to which the data necessary to complete digital mapping of the entire System are available;

(C) the need for additional data to complete digital mapping of the entire System;

(D) the extent to which the boundary lines on the digital maps differ from the boundary lines on the original maps; and

(E) the amount of funding necessary to complete digital mapping of the entire System.

(e) Authorization of Appropriations.--There is authorized to be appropriated to the Secretary to carry out this section \$500,000 for each of fiscal years 2002 through 2004.

SEC. 7. ECONOMIC ASSESSMENT OF JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM.

(a) In General.--Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives an economic assessment of the John H. Chafee Coastal Barrier Resources System.

(b) Required Elements.--The assessment shall consider the impact on Federal expenditures of the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), including impacts resulting from the avoidance of Federal expenditures for--

(1) disaster relief under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(2) the national flood insurance program established under chapter 1 of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.); and

(3) development assistance for roads, potable water supplies, and wastewater infrastructure.

SUBJECT: HABITATS (90%); COASTAL AREAS (90%); LEGISLATION (90%); WETLANDS (78%); ENVIRONMENT (78%); SEWERAGE SYSTEMS (75%); WATER & WASTEWATER MANAGEMENT (75%); WATER QUALITY (72%);

LOAD-DATE: 09-28-2000



COASTAL BARRIER RESOURCES SYSTEM

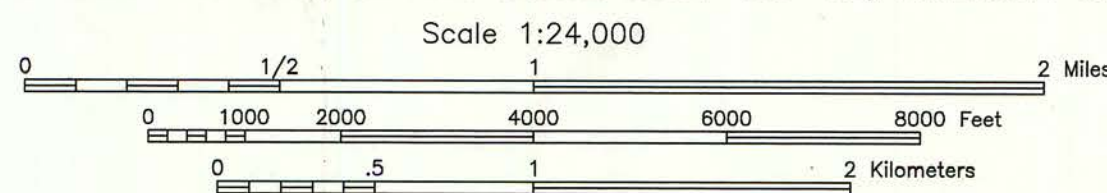
CLAM ISLAND UNIT NY-41/NY-41P, MILL CREEK UNIT NY-42, SHORT BEACH UNIT NY-43/NY-43P
GLEASON POINT UNIT NY-44, SHELL BEACH UNIT NY-45, CRAB CREEK UNIT NY-46
HAY BEACH POINT UNIT NY-47, SHELTER ISLAND BARRIERS F06
MASHOMACK POINT UNIT NY-48, SMITH COVE UNIT NY-49, FRESH POND UNIT NY-50

— Solid lines depict units in the CBRS.

..... Dotted lines depict "otherwise protected areas" not within the CBRS. These areas are shown with the Letter "P" following the unit number.

October 24, 1990
Revised July 12, 1996

This map has been produced by the U.S. Fish and Wildlife Service from a set of maps adopted by Congress pursuant to the Coastal Barrier Improvement Act P.L. 101-591 and supersedes all previous maps prepared by the Service concerning undeveloped coastal barriers. The boundary delineation of this map has been modified pursuant to Section 4(C) of the act.



From: [Kodis, Martin](#)
To: [Cole Rojewski](#); [Playforth, Taylor](#)
Cc: [Wainman, Barbara](#); [Melissa Beaumont](#); [Elizabeth Berg](#); [Jester, Julia](#)
Subject: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
Date: Wednesday, June 26, 2019 10:55:20 AM
Attachments: [2019-06-24 RG to FWS and USGS on CBRA study.pdf](#)

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

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

June 24, 2019

Margaret Everson
Principal Deputy Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

Jim Reilly
Director
U.S. Geological Survey
12201 Sunrise Valley Drive
Reston, VA 20192

Dear Ms. Everson and Mr. Reilly:

I am writing you today regarding the Coastal Barrier Resources Act (CBRA), which falls under the jurisdiction of the House Natural Resources Committee. As you know, the CBRA helps to conserve our nation's coastal resources, save federal tax dollars, and promote public safety. The System currently protects 3.5 million acres along the Atlantic Ocean, Gulf of Mexico, Great Lakes, U.S. Virgin Islands and Puerto Rico. These islands, beaches, wetlands and nearshore waters provide important wildlife habitat while also buffering storm and erosion impacts, which helps protect nearby communities from costly damage. The CBRA also saves federal tax dollars. According to a recent economic study, the CBRA has saved the federal taxpayer \$9.5 billion by prohibiting most federal expenditures on areas included in the Coastal Barrier Resources System (CBRS). The CBRA also helps to promote public safety by withdrawing the federal financial safety net that supports development on areas that are prone to hurricanes, storms, and sea level rise.

Congress recently expanded the CBRS by enacting the bipartisan H.R. 5787, which added 18,240 acres to the System along Delaware, North and South Carolina, and Florida. We understand that the U.S. Fish and Wildlife Service (FWS) recently sought comment on proposed changes to the CBRS maps for the nine coastal states that were impacted by Hurricane Sandy (NH, MA, RI, CT, NY, NJ, DE, MA, VA). We anticipate receiving the Service's proposed map changes in 2020 for Congressional review and action.

Over the years, various federal studies have been conducted on the CBRA and relevant issues as they have arisen. In the late 1970s, the Department of Interior (DOI) was directed to evaluate ways in which certain coastal areas could be exempted from federal financial expenditures in order to conserve these areas. The resulting studies led to the enactment of the CBRA in 1982. CBRA directed DOI to report to Congress with recommendations concerning areas that could be added to or deleted from the CBRS and in response, DOI undertook a six-year study that culminated in final recommendations to Congress in 1988. The 1988 study was the underpinning of the Coastal Barrier Improvement Act of 1990. In 2000, Congress directed DOI to conduct a pilot project regarding the feasibility and cost of creating digital maps for the entire CBRS, and in 2006, Congress directed DOI to finalize the pilot project and report back regarding the process. The pilot project maps formed the basis of H.R. 5787, which was enacted in December 2018.

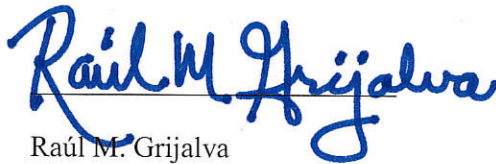
The studies conducted by DOI around issues relevant to CBRA have been important and useful sources of information for Congress and have helped guide Congressional action. Indeed, no significant changes to CBRA have been implemented without first directing DOI to study the issue and report back to Congress. A new issue has arisen with respect to CBRA and therefore, we are writing to request that the USGS, in conjunction with the FWS, conduct a study that will help provide needed information.

There has been interest expressed in sand and/or sediment removal from CBRS areas in order to renourish areas that are experiencing erosion. CBRA Section 6(a) oversees the use of materials dredged from CBRS areas. However, the impacts from sand/sediment removal have never been studied by DOI or any other federal agency. Since the USGS has expertise regarding the geological processes associated with coastal barriers, and the FWS has expertise regarding coastal fish and wildlife resources and habitats, we are requesting that the two agencies work together to study and report back on a number of issues surrounding sand/sediment removal from CBRS areas. We request that USGS, in conjunction with the FWS, evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS. The analysis should include, but not be necessarily limited to, the following:

- Disruption of sand movement and sand supplies, including the impact of removing sand/sediments from the rate of supply of sediment/sand to connected features and down-drift beaches. This should include studying the amount of time that is necessary for the mined/dredged feature to return to its volume prior to the removal operation, as well as evaluating the reductions to the transport rates to other morphologic features of the system.
- Impacts on the benthic ecosystem, including the short- and long-term recovery of surficial sediment characteristics, and changes to species density, number and composition that reside in or migrate through the disturbed and adjacent areas.
- Impacts on finfish and shellfish, sea mammals, and sea turtles from removing sand/sediment from coastal areas in terms of food and habitat impacts, alterations to bathymetric contours, and effects on the guiding features of underwater features for coastal migratory species.
- Impacts of removal of sand/sediment from spits, tidal flats, shoals, sandbars and inlets on resident and migratory birds' nesting and foraging activities. This should include an evaluation of the impact of instantaneous removal of sand/sediment from the system in comparison to the gradual and continuous movement of sand/sediment within the system.
- Potential reduction of coastal resiliency by removing sand/sediments that help buffer storm impacts for nearby communities. Impacts on the rate of erosion in the mined/dredged area, and changing shoreline equilibrium, should also be evaluated, as should sediment supply for nearby wetlands and marshes.

We would welcome the results of this study so that Congress may be adequately informed about the impacts of sand/sediment removal from the CBRS. Please contact Rachel Gentile (202-226-4775) on my staff with any questions about this request.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources

From: [Playforth, Taylor](#)
To: [Kodis, Martin](#)
Cc: [Cole Rojewski](#); [Wainman, Barbara](#); [Melissa Beaumont](#); [Elizabeth Berg](#); [Jester, Julia](#)
Subject: Re: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
Date: Wednesday, June 26, 2019 11:03:20 AM

Marty,

Thanks for sharing, I'll probably give you a call to discuss later today.

On Wed, Jun 26, 2019 at 10:54 AM Kodis, Martin <martin_kodis@fws.gov> wrote:

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

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

From: [Wainman, Barbara](#)
To: [Margaret Everson](#); [Steve Guertin](#); [Frazer, Gary](#)
Subject: Fwd: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
Date: Wednesday, June 26, 2019 11:09:09 AM
Attachments: [2019-06-24 RG to FWS and USGS on CBRA study.pdf](#)

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
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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

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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: [Mills, Katie](#)
To: [Playforth, Taylor](#); [Melissa Beaumont](#)
Subject: Re: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
Date: Wednesday, June 26, 2019 11:19:31 AM

My two cents: I don't think a new study is necessary. Instead of reinventing the wheel, these questions should be already addressed in many NEPA documents, as well as other USGS publications, and Section 7 Biological Opinions. Just something to consider.
Katie

On Wed, Jun 26, 2019 at 10:59 AM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:
fysa

----- 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>

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Thank you,

Marty

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Martin Kodis
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--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

From: [Wainman, Barbara](#)
To: [Gary Frazer](#)
Cc: [Margaret Everson](#); [Steve Guertin](#); [Gina Shultz](#); [Martha Balis Larsen](#)
Subject: Re: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
Date: Wednesday, June 26, 2019 11:25:48 AM

I did not get the impression that the Secretarial briefing was going away just delayed but maybe you are right at any rate I wanted Margaret to be aware of this new wrinkle. Marty is working with OCL and his counterpart at USGS to talk about how to respond.

Barbara W. Wainman
Assistant Director, External Affairs
US Fish and Wildlife Service
(202) 208-5256 (office)
(571) 471-4159 (cell)

On Wed, Jun 26, 2019 at 11:19 AM Gary Frazer <gary_frazer@fws.gov> wrote:

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>

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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

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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: [Beaumont, Melissa](#)
To: [Katie Mills](#)
Subject: Fwd: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
Date: Wednesday, June 26, 2019 11:39:29 AM
Attachments: [2019-06-24 RG to FWS and USGS on CBRA study.pdf](#)

FYI

----- 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>

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--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Budd-Falen, Karen](#)
To: [Katie Mills](#); [Taylor Playforth](#); [Melissa Beaumont](#)
Subject: Re: [EXTERNAL] FWS CBRA Opinion
Date: Saturday, June 29, 2019 1:32:50 PM

Taylor:

When we were on the phone, (b)(5)ACP(b)(5)ACP(b)(5)ACP(b)(5)ACP(b)(5)ACP
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thanks

On Fri, Jun 28, 2019 at 6:20 PM Katie Mills <katie_mills@ios.doi.gov> wrote:

With attachments this time. Let me know if this will work for what you asked for. From my recollection, they indicated they could provide something different.

Katie

Sent from my iPhone

Begin forwarded message:

From: "Playforth, Taylor" <taylor_playforth@ios.doi.gov>
Date: June 28, 2019 at 12:19:37 PM EDT
To: Katie Mills <katie_mills@ios.doi.gov>
Subject: Fwd: [EXTERNAL] FWS CBRA Opinion

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Thanks,

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

From: **Chappell, Perry** <Perry.Chappell@mail.house.gov>

Date: Fri, Jun 28, 2019 at 11:24 AM

Subject: [EXTERNAL] FWS CBRA Opinion

To: Playforth, Taylor <taylor_playforth@ios.doi.gov>

Cc: Brown, Corey (Tillis) <Corey_Brown@tillis.senate.gov>

Hey Taylor,

I was going through my files yesterday after our call and remembered that FWS had sent a response to a letter by Rep. Graves (LA) my boss signed regarding CBRA.

FWS response explicitly states that the Corps has sought to mine sand for use outside of a CBRA unit for shoreline stabilization projects, has sought an exception for this purpose from the Service, and that it is still the Service's opinion that CBRA sand cannot be used for this purpose outside the system.

Original letter from the Members of Congress and FWS response are attached. I believe this will satisfy the request for an indication in writing that FWS is actively engaged on this issue and is on the record as opposed to the Corps using CBRA sand for these types of projects.

I wanted to get y'all something asap, but I'm still working on running down documentation on the Army Corps side. I have discovered that USACE correspondence regarding this issue has been internal emails, phone calls, and memos, which I have been told they will not share and don't fall under FOIA.

Perry Chappell

Legislative Assistant

Rep. David Rouzer (NC-07)

2439 Rayburn HOB

(202)225-2731

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

From: [Budd-Falen, Karen](#)
To: [Margaret Everson](#)
Subject: Fwd: [EXTERNAL] FWS CBRA Opinion
Date: Saturday, June 29, 2019 1:39:18 PM
Attachments: [Original Letter to FWS Regarding CBRA Sand Borrowing Issue.pdf](#)
[Response from FWS Regarding CBRA Sand Borrowing.pdf](#)

Margaret:

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Just giving you a heads up.

thanks

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

From: **Katie Mills** <katie_mills@ios.doi.gov>
Date: Fri, Jun 28, 2019 at 6:20 PM
Subject: Fwd: [EXTERNAL] FWS CBRA Opinion
To: <karen.budd-falen@sol.doi.gov>

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Sent from my iPhone

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From: "Playforth, Taylor" <taylor_playforth@ios.doi.gov>
Date: June 28, 2019 at 12:19:37 PM EDT
To: Katie Mills <katie_mills@ios.doi.gov>
Subject: Fwd: [EXTERNAL] FWS CBRA Opinion

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Thanks,

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Date: Fri, Jun 28, 2019 at 11:24 AM

Subject: [EXTERNAL] FWS CBRA Opinion

To: Playforth, Taylor <taylor_playforth@ios.doi.gov>

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Legislative Assistant

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karen.budd-falen@sol.doi.gov

From: [Budd-Falen, Karen](#)
To: [Margaret Everson](#)
Subject: Fwd: [EXTERNAL] FWS CBRA Opinion
Date: Saturday, June 29, 2019 1:46:24 PM

This goes with the e-mail I just sent to you on CBRA.

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

From: **Katie Mills** <katie_mills@ios.doi.gov>
Date: Fri, Jun 28, 2019 at 6:18 PM
Subject: Fwd: [EXTERNAL] FWS CBRA Opinion
To: <karen.budd-falen@sol.doi.gov>

Sent from my iPhone

Begin forwarded message:

From: "Mills, Katie" <katie_mills@ios.doi.gov>
Date: June 28, 2019 at 1:07:06 PM EDT
To: "Playforth, Taylor" <taylor_playforth@ios.doi.gov>
Subject: Re: [EXTERNAL] FWS CBRA Opinion

We have no idea of knowing what that plan is, or when it was. They said they could provide it.

On Fri, Jun 28, 2019 at 12:56 PM Playforth, Taylor
<taylor_playforth@ios.doi.gov> wrote:
can we ask our folks for that plan?

On Fri, Jun 28, 2019 at 12:48 PM Mills, Katie <katie_mills@ios.doi.gov>
wrote:

This does not satisfy the request. In their example, a plan was submitted, and FWS returned back to the federal agency insisting that the agency had to do the plan using the offshore borrow site.

On Fri, Jun 28, 2019 at 12:20 PM Playforth, Taylor
<taylor_playforth@ios.doi.gov> wrote:

Can we see if FWS has the USACE/FWS docs Karen is seeking? Although our own letter clearly states the 1994 opinion is our position I don't think this is what Karen is seeking.

Thanks,

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

From: **Chappell, Perry** <Perry.Chappell@mail.house.gov>
Date: Fri, Jun 28, 2019 at 11:24 AM
Subject: [EXTERNAL] FWS CBRA Opinion
To: Playforth, Taylor <taylor_playforth@ios.doi.gov>
Cc: Brown, Corey (Tillis) <Corey_Brown@tillis.senate.gov>

Hey Taylor,

I was going through my files yesterday after our call and remembered that FWS had sent a response to a letter by Rep. Graves (LA) my boss signed regarding CBRA.

FWS response explicitly states that the Corps has sought to mine sand for use outside of a CBRA unit for shoreline stabilization projects, has sought an exception for this purpose from the Service, and that it is still the Service's opinion that CBRA sand cannot be used for this purpose outside the system.

Original letter from the Members of Congress and FWS response are attached. I believe this will satisfy the request for an indication in writing that FWS is actively engaged on this issue and is on the record as opposed to the Corps using CBRA sand for these types of projects.

I wanted to get y'all something asap, but I'm still working on running down documentation on the Army Corps side. I have discovered that USACE correspondence regarding this issue has been internal emails, phone calls, and memos, which I have been told they will not share and don't fall under FOIA.

Perry Chappell

Legislative Assistant

Rep. David Rouzer (NC-07)

2439 Rayburn HOB

(202)225-2731

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

--

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

From: [Wainman, Barbara](#)
To: [Margaret Everson](#)
Subject: Fwd: CBRA op ed in Washington Examiner fyi
Date: Monday, July 8, 2019 11:12:47 AM

I am sure this is still being discussed this is a good read

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: Mon, Jul 8, 2019 at 9:48 AM
Subject: CBRA op ed in Washington Examiner fyi
To: Wainman, Barbara <barbara_wainman@fws.gov>, Matthew Huggler
<matthew_huggler@fws.gov>

This is from last week in case you haven't seen already. It mentions Reps Van Drew and Graves.

Marty

<https://www.washingtonexaminer.com/opinion/ronald-reagans-lasting-environmental-legacy>

--

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: [Budd-Falen, Karen](#)
To: [Margaret Everson](#)
Subject: Re: CBRA
Date: Thursday, July 18, 2019 12:54:47 PM

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On Thu, Jul 18, 2019 at 12:50 PM Margaret Everson <margaret_e_everson@fws.gov> wrote:

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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:

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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)
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karen.budd-falen@sol.doi.gov

--

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202-365-5854 (Cell)
karen.budd-falen@sol.doi.gov

From: [Katie Mills](#)
To: [Beaumont, Melissa](#)
Subject: Re: CBRA Letter 070020
Date: Monday, July 22, 2019 7:52:10 PM

Ok great. Thanks Melissa!

Sent from my iPhone

On Jul 22, 2019, at 7:05 PM, Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Just wanted to let you know that this letter is now with OCL

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Frazer, Gary](#)
To: [Beaumont, Melissa](#)
Cc: [Charisa Morris](#); [Gina Shultz](#)
Subject: Re: CBRA Memo
Date: Thursday, July 25, 2019 10:22:30 AM

Will do -- GDF

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

On Wed, Jul 24, 2019 at 7:31 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Hi Gary,

Margaret asked if we could put together a briefing paper on the CBRA issues recently raised by members of congress. I understand she still needs to chat with SOL for legal direction, but asked that we start putting together a memo on the background of the issue for her. Could we have something put together for her by the end of next week?

Thanks,
Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Gustavson, Angela](#)
To: [Taylor Playforth](#)
Cc: [Cole Rojewski](#); [Amanda Hall](#); [Martin Kodis](#); [Melissa Beaumont](#); [Katie Mills](#)
Subject: Re: FWS Congressional Correspondence with OCL for surname
Date: Friday, August 9, 2019 9:49:52 AM

Great, we appreciate the update on these.

Angela

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

On Fri, Aug 9, 2019 at 9:47 AM Taylor Playforth <taylor_playforth@ios.doi.gov> wrote:

Yes I have the letters on my desk, pending the memo decision memo Karen requested a few weeks ago.

Sent from my iPhone

On Aug 9, 2019, at 9:38 AM, Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Hi Cole, Taylor, and Amanda,

We wanted to flag two letters that are with OCL for clearance.

069862 - Rep Pallone - Regarding CBRA unit in Monmouth County - With OCL as of 5/27

069830 - Rep. VanDrew - Regarding CBRA unit reclassification and sand renourishment - with OCL as of 5/29

Please let me know if you need anything else on these letters.

Thanks,

Angela

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

From: [Melissa Beaumont](#)
To: katie_mills@ios.doi.gov
Subject: Fwd: Van Drew / CBRA meeting in State / Mon / FWS Participation
Date: Thursday, October 3, 2019 4:58:11 PM

FYI

Sent from my iPhone

Begin forwarded message:

From: "Kodis, Martin" <martin_kodis@fws.gov>
Date: October 3, 2019 at 4:51:42 PM EDT
To: Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>
Cc: "Wainman, Barbara" <barbara_wainman@fws.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>, "Hall, Amanda" <amanda_hall@ios.doi.gov>, Angela Gustavson <angela_gustavson@fws.gov>
Subject: Van Drew / CBRA meeting in State / Mon / FWS Participation

Hi Margaret and John,

Rep. Van Drew's (D-NJ) LD reached out to our NJ Field Supervisor this week and asked him to attend a meeting on the CBRA issue (taking sand from a CBRA unit to nourish beaches outside the CBRA unit) that the Congressman raised with the Secretary earlier this year.

The meeting is Monday. We have no context for the meeting - whether it's a small group discussion, or a public forum. There is no announcement on the Congressman's website or in the local news that I can find.

Our Field Supervisor is well versed on the issue and is seasoned, competent and measured. The region and our CBRA team has confidence in him attending any meeting, and that his participation would be tied to providing facts on the issue in an objective manner. He is not in the position to change/craft national policy and understands how to convey that.

Our Field Supervisor has not talked with Van Drew's office (the invite was a simple one sentence email) and I have not called them yet. I'm happy to contact them for more info, but wanted to touch base with you first as I know this is an issue that the Secretary was asked about at a hearing, and that folks in FWP have been interested in (Katie and Aurelia have engaged on CBRA issues I believe). If/when we call Van Drew's office, they will naturally ask about any progress or updates from within DOI.

My recommendation is that I call Van Drew's LD, tell him I'm aware of the meeting and ask for more context. I will state, if asked about it, that the Secretary asked his team to look into the specific CBRA issue and that that process is ongoing. I anticipate he would ask for more specific information on that process

and where it stands; which would be a followup item. I would then report back to you any context learned, and we can then determine whether it makes sense for the Field Supervisor to attend the meeting on Monday.

I'm hoping to get clarity on whether our Field Supervisor should attend the meeting before the day is over tomorrow.

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

From: [Beaumont, Melissa](#)
To: [Gary Frazer](#); [Margaret Everson](#)
Subject: Fwd: CBRA
Date: Friday, October 4, 2019 11:44:12 AM

Do you all remember where we left off on 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.

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(b)

Margaret

Sent from my iPhone

On Jul 18, 2019, at 12:46 PM, Budd-Falen, Karen <karen.budd-falen@sol.doi.gov> wrote:

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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

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Hall, Amanda](#)
To: [Kodis, Martin](#)
Cc: [Margaret Everson](#); [John Tanner](#); [Wainman, Barbara](#); [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Re: Van Drew / CBRA meeting in State / Mon / FWS Participation
Date: Friday, October 4, 2019 2:10:17 PM

OCL is good with this.

On Thu, Oct 3, 2019 at 4:52 PM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Margaret and John,

Rep. Van Drew's (D-NJ) LD reached out to our NJ Field Supervisor this week and asked him to attend a meeting on the CBRA issue (taking sand from a CBRA unit to nourish beaches outside the CBRA unit) that the Congressman raised with the Secretary earlier this year.

The meeting is Monday. We have no context for the meeting - whether it's a small group discussion, or a public forum. There is no announcement on the Congressman's website or in the local news that I can find.

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Our Field Supervisor has not talked with Van Drew's office (the invite was a simple one sentence email) and I have not called them yet. I'm happy to contact them for more info, but wanted to touch base with you first as I know this is an issue that the Secretary was asked about at a hearing, and that folks in FWP have been interested in (Katie and Aurelia have engaged on CBRA issues I believe). If/when we call Van Drew's office, they will naturally ask about any progress or updates from within DOI.

My recommendation is that I call Van Drew's LD, tell him I'm aware of the meeting and ask for more context. I will state, if asked about it, that the Secretary asked his team to look into the specific CBRA issue and that that process is ongoing. I anticipate he would ask for more specific information on that process and where it stands; which would be a followup item. I would then report back to you any context learned, and we can then determine whether it makes sense for the Field Supervisor to attend the meeting on Monday.

I'm hoping to get clarity on whether our Field Supervisor should attend the meeting before the day is over tomorrow.

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

--

Amanda Hall

Advisor, Office of Congressional and Legislative Affairs

U.S. Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

From: [Melissa Beaumont](#)
To: melissa_beaumont@fws.gov
Subject: Fwd: High Priority-please review sand mining IM
Date: Tuesday, October 15, 2019 12:11:42 PM

Sent from my iPhone

Begin forwarded message:

From: "Wright, Dana" <dana_wright@fws.gov>
Date: July 31, 2019 at 8:34:31 AM EDT
To: "Beaumont, Melissa" <melissa_beaumont@fws.gov>
Cc: "BalisLarsen, Martha" <martha_balislarsen@fws.gov>, Katie Niemi <katie_niemi@fws.gov>, Gary D Frazer <Gary_Frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>
Subject: Re: High Priority-please review sand mining IM

Hi Melissa,

The Corps is not officially consulting with the Service under CBRA on the two North Carolina projects. A CBRA consultation for one of the borrow sites was completed in the late 1990's, and the Service indicated at that time that use of the borrow site was not permitted under CBRA. Our interpretation of CBRA on this matter has been upheld consistently for the last 25 years, and by now is pretty well known in the affected Corps District offices and also the Corps' Office of the Chief Counsel. It's possible that they are not consulting because they know what our position is and don't want to spend time on any more back and forth.

The Service has no regulatory authority over CBRA, and if the Corps truly disagreed with our position and felt that our interpretation of the statute was incorrect, they could go ahead and do the project using the CBRA borrow sites. The Corps' Wilmington, NC District did take that position years ago (which is why they have historically used some of the NC borrow sites), but has since indicated that they are no longer willing to "agree to disagree" and will stop using the borrow sites unless Congress provides a legislative exemption.

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, Jul 30, 2019 at 5:22 PM Beaumont, Melissa

<melissa_beaumont@fws.gov> wrote:

Thanks Martha, that sounds good to me. I'll wait to hear back from Martha before moving forward.

On Tue, Jul 30, 2019 at 5:12 PM BalisLarsen, Martha

<martha_balislarsen@fws.gov> wrote:

Melissa, the exceptions are somewhat wordy so it may be easiest if we attached the information from our website. It provides the exact language. Please see <https://www.fws.gov/cbra/Limitations-and-Exceptions.html>.

Dana will get back to you in the morning regarding your question on the NC Corps projects.

Martha

On Tue, Jul 30, 2019 at 3:18 PM Beaumont, Melissa

<melissa_beaumont@fws.gov> wrote:

Thanks Dana! Do you mind helping me with two more questions I attached in the word doc? :)

On Tue, Jul 30, 2019 at 2:55 PM Wright, Dana <dana_wright@fws.gov> wrote:

Hi Melissa,

I've added the exemptions to the first section. The revised version is attached.

There are Corps projects in North Carolina that folks have been asking about. The projects are not exactly restoration, but two separate periodic beach renourishment efforts that are part of coastal storm risk management projects. The projects are mentioned under section III in the second paragraph. These projects are in Representative Rouzer's district (Rep. Rouzer is also mentioned elsewhere in the IM).

Please let me know if you have any further questions,

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, Jul 30, 2019 at 2:32 PM Beaumont, Melissa

<melissa_beaumont@fws.gov> wrote:

Thank you very much Martha!

Could you help me with 2 things -

1. In the first paragraph, can we briefly list or explain the exemptions?
2. Is there also a restoration project in NC that folks have been asking about?

On Tue, Jul 30, 2019 at 2:15 PM BalisLarsen, Martha

<martha_balislarsen@fws.gov> wrote:

Melissa, per your request to Gary Frazer, attached is an updated briefing paper on sand mining from within CBRA units that Margaret requested. Please let us know if you have any questions or need additional information.

Martha

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
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--

Melissa Beaumont
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--

Melissa Beaumont
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U.S. Department of the Interior
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Cell: 202-856-5205

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Morris, Charisa](#)
To: [Bryan Arroyo](#); [Stephen Guertin](#); [Margaret Everson](#); [Melissa Beaumont](#); [Barbara Wainman](#)
Subject: Our (perhaps soon to be repurposed) FWP check-in agenda
Date: Tuesday, October 15, 2019 12:45:04 PM
Attachments: [FWS - ASFWP Agenda \(7\).docx](#)

Attached, FYI, for this week.

--

She/Her/Hers | Charisa.Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

From: [Gustavson, Angela](#)
To: [Beaumont, Melissa](#)
Cc: [Martin Kodis](#); [Elizabeth Berg](#)
Subject: Re: DTS 069862 - Pallone CBRA Letter
Date: Tuesday, October 15, 2019 5:01:55 PM
Attachments: [069862 Pallone v5 draft final.doc](#)

Hi Melissa,

The attached letter is the current version of the draft response letter in DTS.

Angela

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

On Tue, Oct 15, 2019 at 10:33 AM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Hi Marty & Angela,

Can someone on your team send me the latest version of this letter? I know it got held up for a while but we are trying to move these constituent issue CBRA letters.

I have two packages with the same letter so I want to make sure I have the right one that we can get Margaret to review and hopefully clear.

Thank you!
Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069862

The Honorable Frank Pallone, Jr.
House of Representatives
Washington, D.C. 20515

Dear Representative Pallone:

Thank you for your letter of March 8, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the proposed changes to the John H. Chafee Coastal Barrier Resources System (CBRS) in Monmouth County, New Jersey. The establishment of Ware Creek Unit NJ-18, which was proposed as a new CBRS unit by the Service in 2018, would impact property and facilities owned and maintained by Monmouth County, including a Confined Disposal Area. Your letter asks that we take into consideration the concerns that were raised by the County in their comment letter to the Service dated June 26, 2018. You also requested a meeting among your office, appropriate Service staff, and the County to ensure that the County's concerns are fully understood and possible remedies are discussed.

In the process of preparing the draft revised boundaries for the Hurricane Sandy Remapping Project, the Service identified undeveloped coastal barrier areas and associated aquatic habitat for possible inclusion to the CBRS (per a directive in Pub. L. 109-226) as either entirely new units or additions to existing units. The Ware Creek area in Monmouth County was identified as proposed new CBRS Unit NJ-18 (see enclosed map). The Belford New York Waterway Ferry Terminal and associated parking lot are located outside of the proposed new unit, but the N-61 Interim Confined Disposal Area and a portion of the shoreline to the east of the ferry terminal are within the proposed new unit. We sought public comment on the proposed changes to the CBRS during a 120-day comment period in 2018.

The Service is in receipt of the comment letter from Monmouth County dated June 26, 2018. We are currently reassessing proposed new Unit NJ-18. Some data collected by the Service for the project had indicated that the western portion of the proposed new unit was wetlands. However, upon further review of recent aerial imagery and the information submitted by the County, we found that the western portion of the area that was proposed for addition to the CBRS (in the immediate vicinity of the Confined Disposal Area) does not qualify for inclusion within the CBRS. On March 22, 2019, we held a conference call with Monmouth County to discuss their concerns. During this call, we also learned that there is a capped landfill near the proposed new unit, and that there are concerns regarding the potential effects of a CBRS designation on the landfill. We will continue to coordinate closely with Monmouth County to gather the information necessary to make a recommendation to Congress, and plan to revise the mapping accordingly.

We recently conducted a public review of the draft revised boundaries for the second batch of the Hurricane Sandy Remapping Project, which includes draft revised boundaries for the CBRS units in Connecticut, Maryland, New York (Long Island), Rhode Island, and Virginia. Now that both comment periods for the project have closed, we will make appropriate adjustments to the boundaries (for all units included in the project) based on public comments, statutory development criteria, and objective mapping protocols. We will then prepare summaries of and

responses to the comments received along with final recommended maps for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

We hope this information is helpful. Please let me know if our ongoing efforts to collaborate directly with Monmouth County on this matter satisfy your request for a meeting with your office; if they do not, please contact the Service's Chief of Congressional and Legislative Affairs, Mr. Martin Kodis, at (703) 358-2241.

Sincerely,

Gary Frazer

Enclosure

From: [Beaumont, Melissa](#)
To: [Budd-Falen, Karen](#)
Cc: [Margaret Everson](#)
Subject: Re: CBRA
Date: Tuesday, October 15, 2019 5:03:22 PM

Hi Karen,

Just wanted to let you know that Gary's shop is putting together a draft for this.

Thanks,
Melissa

On Tue, Oct 15, 2019 at 10:53 AM Budd-Falen, Karen <karen.budd-falen@sol.doi.gov> wrote:

Margaret--are you having someone put this together?

On Tue, Oct 15, 2019 at 10:50 AM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

All,

This Secretary is currently scheduled to meet with Congressman Jeff Van Drew early next week to discuss CBRA issues so Cole has asked that we circle back on this request for a Decision Memo no later than CoB Thursday October 17th.

Happy to discuss if you have any questions,

Thanks!

On Thu, Jul 18, 2019 at 12:50 PM Margaret Everson <margaret_e_everson@fws.gov> wrote:

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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:

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Thanks

--

Karen Budd-Falen
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1849 C Streets NW
Washington D.C. 20240
202-208-4507 (Voice)
202-365-5854 (Cell)
karen.budd-falen@sol.doi.gov

--

Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

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Karen Budd-Falen
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--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Katie Mills](#)
To: [Kodis, Martin](#)
Cc: [Aurelia Skipwith](#); [John Tanner](#); [Hall, Amanda](#); [Maureen Foster](#); [Margaret Everson](#); [Wainman, Barbara](#); [Melissa Beaumont](#); [Cole Rojewski](#); karen.budd-falen@sol.doi.gov; taylor_playforth@ios.doi.gov
Subject: Re: For Today / Rep. Van Drew / CBRA Meeting in NJ on Mon / FWS Participation
Date: Tuesday, October 15, 2019 6:33:55 PM

Marty, in light of the Secretary's meeting with Rep. Van Drew next week on this topic, can you provide an update on how the below described meeting went? What was discussed, what the Secretary should be aware of for next week? Thank you!

Katie

Sent from my iPhone

On Oct 4, 2019, at 11:35 AM, Kodis, Martin <martin_kodis@fws.gov> wrote:

Hello all,

This email requests concurrence and guidance today to send a FWS field supervisor to attend a stakeholder meeting this Monday convened by Rep. Jeff Van Drew (D-NJ) regarding a CBRA issue. Margaret is comfortable with our employee attending, but wanted to run it by the folks on this email and she also asked whether OCL had some talking points. Please read below for more information.

Rep. Van Drew's (D-NJ) legislative director reached out to our NJ Field Supervisor this week and asked him to attend a meeting on the CBRA issue that the Congressman raised with the Secretary earlier this year (taking sand from a CBRA unit to nourish beaches outside the CBRA unit).

The meeting is Monday. We don't have full context for the meeting - but it appears to be a convening of stakeholders - Corps, FWS, town, state, Audubon - in the Congressman's relatively small Mays Landing district office. This is not a public meeting. We suspect the Congressman wants to have a discussion among stakeholders to see if there are solutions to the immediate issue.

Our Field Supervisor is well versed on the issue and is seasoned, competent and measured. The region and our CBRA team has confidence in him attending any meeting, and that his participation would be tied to providing facts on the issue in an objective manner. He is not in the position to change/craft national policy and understands how to convey that. If there are OCL talking points he can relay those, and in any case if asked about the SOL opinion, he'll say that's what we're following now; and that he's aware that DOI is looking at this issue, but that he's not a part of that process.

Again, Margaret is ok with this, but wanted to run it by the folks on this email and see if there are any OCL talking points. Please let me know today if there are any concerns or questions. If our field supervisor goes to the meeting, he will report out on what was discussed.

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: [Katie Mills](#)
To: [Kodis, Martin](#)
Cc: [Aurelia Skipwith](#); [John Tanner](#); [Hall, Amanda](#); [Maureen Foster](#); [Margaret Everson](#); [Wainman, Barbara](#); [Melissa Beaumont](#); [Cole Rojewski](#); karen.budd-falen@sol.doi.gov; [Playforth, Taylor](#)
Subject: Re: For Today / Rep. Van Drew / CBRA Meeting in NJ on Mon / FWS Participation
Date: Tuesday, October 15, 2019 6:58:52 PM

Sounds good. Thank you so much for the prompt response! If you find out anything else, just let us know. Thank you again!
Katie

Sent from my iPhone

On Oct 15, 2019, at 6:52 PM, Kodis, Martin <martin_kodis@fws.gov> wrote:

Quick answer is that our guy went to the meeting, but it was cancelled (they didn't tell him) b/c the Congressman wasn't feeling well. They rescheduled to last Friday, but he couldn't attend. We can try to find out details and will relay any we get.

Thanks,

Marty

On Tue, Oct 15, 2019 at 6:33 PM Katie Mills <katie_mills@ios.doi.gov> wrote:

Marty, in light of the Secretary's meeting with Rep. Van Drew next week on this topic, can you provide an update on how the below described meeting went? What was discussed, what the Secretary should be aware of for next week? Thank you!

Katie

Sent from my iPhone

On Oct 4, 2019, at 11:35 AM, Kodis, Martin <martin_kodis@fws.gov> wrote:

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Again, Margaret is ok with this, but wanted to run it by the folks on this email and see if there are any OCL talking points. Please let me know today if there are any concerns or questions. If our field supervisor goes to the meeting, he will report out on what was discussed.

Thank you.

Marty

--

Martin Kodis
Chief, Division of Congressional and Legislative Affairs
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Falls Church, VA 22041

703-358-2241 ph
703-358-2245 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: [Beaumont, Melissa](#)
To: [Berg, Elizabeth](#)
Cc: [Gustavson, Angela](#); [Martin Kodis](#)
Subject: Re: DTS 069862 - Pallone CBRA Letter
Date: Wednesday, October 16, 2019 9:12:21 AM

Thank you Liz! I really appreciate it.

On Wed, Oct 16, 2019 at 8:57 AM Berg, Elizabeth <elizabeth_berg@fws.gov> wrote:

Hi Melissa,

I spoke with our program staff about the Pallone letter, and they do not think that anything needs to be updated.

Here is a list of the outstanding CBRA letters related to constituent issues:

- 069934 Rep. Hoyer (mapping related request - Unit MD-51) - CCU HOLD
- 069862 Rep. Pallone (mapping related request - Unit NJ-18) - CCU HOLD
- FR00003680 FR NOA (FL and SC maps for public review) - 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

Please let me know if you have any questions.

Thank you,
Liz

On Tue, Oct 15, 2019 at 5:44 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Also, Barbara had mentioned there were certain CBRA letters that really need to move - do you all know which ones those are?

On Tue, Oct 15, 2019 at 5:37 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Thanks Angela! After re-reading this letter, I'm wondering if you all think there are any new updates that need to be included now?

On Tue, Oct 15, 2019 at 5:01 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Hi Melissa,

The attached letter is the current version of the draft response letter in DTS.

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253

Mobile: 202-909-5105
angela_gustavson@fws.gov

On Tue, Oct 15, 2019 at 10:33 AM Beaumont, Melissa
<melissa_beaumont@fws.gov> wrote:

Hi Marty & Angela,

Can someone on your team send me the latest version of this letter? I know it got held up for a while but we are trying to move these constituent issue CBRA letters.

I have two packages with the same letter so I want to make sure I have the right one that we can get Margaret to review and hopefully clear.

Thank you!
Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

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Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
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--

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

Office: 202-208-4299

Cell: 202-856-5205

From: [Hall, Amanda](#)
To: [Beaumont, Melissa](#)
Subject: Re: CBRA
Date: Wednesday, October 16, 2019 5:08:59 PM

Great thank you for the update as we need to by COB tomorrow.

On Wed, Oct 16, 2019 at 4:47 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Gary is reviewing the memo now so it should be coming to Margaret soon for review. Just a heads up though - this will need both Karen/SOL and FWP review too.

On Wed, Oct 16, 2019 at 4:15 PM Hall, Amanda <amanda_hall@ios.doi.gov> wrote:
Hey Melissa - do you know where the memo is now?

Thank you!

Amanda

On Tue, Oct 15, 2019 at 5:07 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon,

I just want to confirm for everyone that FWS is working on a draft for this to send up through the review process.

Thanks,
Melissa

On Tue, Oct 15, 2019 at 10:50 AM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

All,

This Secretary is currently scheduled to meet with Congressman Jeff Van Drew early next week to discuss CBRA issues so Cole has asked that we circle back on this request for a Decision Memo no later than CoB Thursday October 17th.

Happy to discuss if you have any questions,

Thanks!

On Thu, Jul 18, 2019 at 12:50 PM Margaret Everson <margaret_e_everson@fws.gov> wrote:

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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:

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Thanks

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Karen Budd-Falen
Deputy Solicitor for Parks and Wildlife
Department of the Interior
Main Interior Building, Suite 6348
1849 C Streets NW
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202-208-4507 (Voice)
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--
Taylor Playforth
Senior Advisor
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(202) 795-0977

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
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--

Amanda Hall
Advisor, Office of Congressional and Legislative Affairs
U.S. Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

--

Amanda Hall
Advisor, Office of Congressional and Legislative Affairs
U.S. Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

From: [Frazer, Gary](#)
To: [Margaret Everson](#)
Cc: [Melissa Beaumont](#); [Karen Budd-Falen](#); [Peg Romanik](#)
Subject: Secretarial Decision Memorandum re. sand mining within CBRS
Date: Wednesday, October 16, 2019 6:39:59 PM
Attachments: [20191016 Decision Briefing Doc - CBRA Sand Mining.docx](#)
[Attachment - 1994 Opinion and AS-FWP letter.pdf](#)

This responds to OCL's request for a decision memo to present options for addressing objections to the Department's long standing legal position with regard to mining sand from within a unit of the Coastal Barrier Resources System (CBRS) for use in beach nourishment outside the CBRS. -- GDF

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

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 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. 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 past 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).

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.

Views of other DOI Bureaus (if applicable):

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

Secretarial Priorities Advanced by Option:

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

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.

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.

OPTION 2:

There are no other DOI Bureaus involved.

N/A

N/A

Certain local communities (and their members of Congress) and the State of New Jersey would support this option, as it would open up potential sand borrow areas to sand mining using federal funds. It is unclear whether the Corps would support this option, although it would make it easier for them to complete certain beach nourishment projects.

Approval - _____

Attachment

FWS.CW.0380

Memorandum

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

From: Charles P. Raynor
Assistant Solicitor
Fish and Wildlife

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

Introduction

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

Background

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

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

* * *

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

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

purposes may receive Federal funding.

Discussion

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

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

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

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

Conclusion

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

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

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



United States Department of the Interior

OFFICE OF THE SECRETARY

1849 C Street, N.W.

Washington, D.C. 20240

JUN 12 1995

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

Dear Dr. Zirschky:

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

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

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

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

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

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

Dr. John H. Zirschky

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

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

Sincerely,

/s/ George T. Frampton Jr.]

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

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

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

From: [Hebert, Samantha](#)
To: [Rojewski, Cole](#)
Cc: [Foster, Maureen](#); [Playforth, Taylor](#); [Budd-Falen, Karen](#); [Beaumont, Melissa](#); [Margaret Everson](#); [John Tanner](#); [Katie Mills](#); [Amanda Hall](#); [Martin Kodis](#)
Subject: Re: CBRA
Date: Thursday, October 17, 2019 3:52:48 PM

Hi All,

I apologize for the confusion. Cole is correct. I need the memo by NOON tomorrow so I can share it with the counselors and then it can go home with the Secretary tomorrow. In order for me to have it by NOON Cole's office will need it earlier to review and add their information.

Thanks,
Sam

On Thu, Oct 17, 2019 at 3:50 PM Rojewski, Cole <cole_rojewski@ios.doi.gov> wrote:

Hi Maureen-

I believe what Sam meant is that the memo is due at 12pm for the Secretary. OCL always receives the memos and add's Congressional context to the memos which is why we ask for it the night before. Please have it to us at the latest by 9am tomorrow morning. If you are unable to do so please call me and explain why this is not possible. Thanks!

Thank you,
Cole

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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

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I just want to confirm for everyone that FWS is working on a draft for this to send up through the review process.

Thanks,
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All,

This Secretary is currently scheduled to meet with Congressman Jeff Van Drew early next week to discuss CBRA issues so Cole has asked that we circle back on this request for a Decision Memo no later than CoB Thursday October 17th.

Happy to discuss if you have any questions,

Thanks!

On Thu, Jul 18, 2019 at 12:50 PM Margaret Everson <margaret_e_everson@fws.gov> wrote:

(b)(5)ACP(b)(5)ACP

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Thank you
Margaret

Sent from my iPhone

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Thanks

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Karen Budd-Falen
Deputy Solicitor for Parks and Wildlife
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1849 C Streets NW
Washington D.C. 20240
202-208-4507 (Voice)
202-365-5854 (Cell)
karen.budd-falen@sol.doi.gov

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Taylor Playforth
Senior Advisor
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Office of Congressional & Legislative Affairs
(202) 795-0977

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

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NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

--

Samantha Hebert
U.S. Department of the Interior
Immediate Office of the Secretary
Director, Scheduling and Advance
Direct: 202-208-4025
Cell: 202-412-6142
Email: Samantha_Hebert@ios.doi.gov

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From: [Foster, Maureen](#)
To: [Rojewski, Cole](#)
Cc: [Samantha Hebert](#); [Playforth, Taylor](#); [Budd-Falen, Karen](#); [Beaumont, Melissa](#); [Margaret Everson](#); [John Tanner](#); [Katie Mills](#); [Amanda Hall](#); [Martin Kodis](#)
Subject: Re: CBRA
Date: Thursday, October 17, 2019 4:31:12 PM

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To: melissa_beaumont@fws.gov
Cc: matthew_huggler@fws.gov
Subject: Fwd: CBRA
Date: Thursday, October 17, 2019 4:44:20 PM

Melissa - Any idea if Margaret has the memo in question?

Sent from my iPhone

Begin forwarded message:

From: "Foster, Maureen" <maureen_foster@ios.doi.gov>
Date: October 17, 2019 at 4:30:49 PM EDT
To: "Rojewski, Cole" <cole_rojewski@ios.doi.gov>
Cc: Samantha Hebert <samantha_hebert@ios.doi.gov>, "Playforth, Taylor" <taylor_playforth@ios.doi.gov>, "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, "Beaumont, Melissa" <melissa_beaumont@fws.gov>, Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Amanda Hall <amanda_hall@ios.doi.gov>, Martin Kodis <martin_kodis@fws.gov>
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Thanks

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Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

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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

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Taylor Playforth
Senior Advisor
US Department of Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

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Cole Rojewski
Director, Office of Congressional and Legislative Affairs

U.S. Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

From: [Beaumont, Melissa](#)
To: [Katie Mills](#); [Amanda Hall](#)
Subject: Fwd: Secretarial Decision Memorandum re. sand mining within CBRS
Date: Thursday, October 17, 2019 7:11:51 PM
Attachments: [20191016 Decision Briefing Doc - CBRA Sand Mining.docx](#)
[Attachment - 1994 Opinion and AS-FWP letter.pdf](#)

Sorry I meant to send you both an advance copy of this earlier today, but my phone was bugging out. I'm not sure where this is in the approval process, but I know Margaret was reviewing earlier this afternoon. I saw the other chain too so I know we have a deadline.

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

From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Wed, Oct 16, 2019 at 6:39 PM
Subject: Secretarial Decision Memorandum re. sand mining within CBRS
To: Margaret Everson <margaret_e_everson@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Karen Budd-Falen <karen.budd-falen@sol.doi.gov>, Peg Romanik <Peg.Romanik@sol.doi.gov>

This responds to OCL's request for a decision memo to present options for addressing objections to the Department's long standing legal position with regard to mining sand from within a unit of the Coastal Barrier Resources System (CBRS) for use in beach nourishment outside the CBRS. -- GDF

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

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Everson, Margaret](#)
To: [Tanner, John](#)
Subject: Re: CBRA
Date: Thursday, October 17, 2019 7:17:40 PM

Thank you. I had one very minor change in the paper. Please let me know if you and Rob would like to meet first thing to discuss,

Best

Margaret

On Thu, Oct 17, 2019 at 5:44 PM Tanner, John <john_tanner@ios.doi.gov> wrote:

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

From: **Foster, Maureen** <maureen_foster@ios.doi.gov>
Date: Thu, Oct 17, 2019 at 4:31 PM
Subject: Re: CBRA
To: Rojewski, Cole <cole_rojewski@ios.doi.gov>
Cc: Samantha Hebert <samantha_hebert@ios.doi.gov>, Playforth, Taylor <taylor_playforth@ios.doi.gov>, Budd-Falen, Karen <karen.budd-falen@sol.doi.gov>, Beaumont, Melissa <melissa_beaumont@fws.gov>, Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>, Amanda Hall <amanda_hall@ios.doi.gov>, Martin Kodis <martin_kodis@fws.gov>

As soon as we receive the briefing paper from FWS, we will review and get it turned around. We don't have it yet so I am not sure if we can meet the 9:00 deadline. We will do our best.

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

On Thu, Oct 17, 2019 at 3:50 PM Rojewski, Cole <cole_rojewski@ios.doi.gov> wrote:
Hi Maureen-

I believe what Sam meant is that the memo is due at 12pm for the Secretary. OCL always receives the memos and add's Congressional context to the memos which is why we ask for it the night before. Please have it to us at the latest by 9am tomorrow morning. If you are unable to do so please call me and explain why this is not possible. Thanks!

Thank you,
Cole

On Thu, Oct 17, 2019 at 3:31 PM Foster, Maureen <maureen_foster@ios.doi.gov> wrote:
Our office spoke with Sam Hebert. It is not due to her until noon on Friday, October 18. We are using that as our due date.

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

On Thu, Oct 17, 2019 at 3:22 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

All,

Circling back to check on the status of the CBRA memo for the Secretary's meeting with Congressman Van Drew. Any updates?

On Tue, Oct 15, 2019 at 6:32 PM Budd-Falen, Karen <karen.budd-falen@sol.doi.gov> wrote:

Thanks!

On Tue, Oct 15, 2019 at 5:07 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good afternoon,

I just want to confirm for everyone that FWS is working on a draft for this to send up through the review process.

Thanks,
Melissa

On Tue, Oct 15, 2019 at 10:50 AM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

All,

This Secretary is currently scheduled to meet with Congressman Jeff Van Drew early next week to discuss CBRA issues so Cole has asked that we circle back on this request for a Decision Memo no later than CoB Thursday October 17th.

Happy to discuss if you have any questions,

Thanks!

On Thu, Jul 18, 2019 at 12:50 PM Margaret Everson

<margaret_e_everson@fws.gov> wrote:

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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:

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(b)

Thanks

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Karen Budd-Falen
Deputy Solicitor for Parks and Wildlife
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1849 C Streets NW
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Taylor Playforth
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--

Cole Rojewski
Director, Office of Congressional and Legislative Affairs
U.S. Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

--

John Tanner

Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
United States Department of the Interior

From: [Beaumont, Melissa](#)
To: [Maureen Foster](#); [Katie Mills](#); [John Tanner](#)
Cc: [Charisa Morris](#); [Margaret Everson](#)
Subject: CBRA Memo
Date: Friday, October 18, 2019 8:05:06 AM
Attachments: [20191016 Decision Briefing Doc - CBRA Sand Mining.docx](#)

Good morning,

I apologize if this was already sent over, but please find attached the CBRA memo from Margaret.

Thank you!
Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Beaumont, Melissa](#)
To: [Mills, Katie](#)
Subject: Re: CBRA Memo
Date: Monday, October 21, 2019 11:30:02 AM
Attachments: [Attachment - 1994 Opinion and AS-FWP letter.pdf](#)

Hey I'm sorry I know this is from Friday, but I saw I missed this - did you still need the attachments?

On Fri, Oct 18, 2019 at 8:34 AM Mills, Katie <katie_mills@ios.doi.gov> wrote:

Thanks Melissa! Can you send along all the attachments mentioned in this memo? Thanks!

On Fri, Oct 18, 2019 at 8:05 AM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Good morning,

I apologize if this was already sent over, but please find attached the CBRA memo from Margaret.

Thank you!

Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
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--

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
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202-802-2114-Cell

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
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Cell: 202-856-5205

From: [Morris, Charisa](#)
To: [Melissa Beaumont](#)
Subject: Re: FWS CBRA Guidance
Date: Wednesday, October 23, 2019 10:54:27 AM

Shoot! I hadn't caught them but I'll pop over now.

On Tue, Oct 22, 2019 at 10:29 PM Melissa Beaumont <melissa_beaumont@fws.gov> wrote:
Charisa,

Did you already ask Gary's team about this? It was on my list from this morning but I didn't want to ask if you had.

Thanks!
Melissa

Sent from my iPhone

--

She/Her/Hers | Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

From: [Morris, Charisa](#)
To: [Roslyn Sellars](#); [Maureen Cooke](#)
Cc: [Melissa Beaumont](#); [Quamme, Sarah](#)
Subject: Please print for PF (email and attachments)
Date: Wednesday, October 23, 2019 11:37:27 AM
Attachments: [CBRS-Validation-Tool-and-Property-Determinations-Fact-Sheet.pdf](#)
[CBRA-Consultation-Fact-Sheet-03292019.pdf](#)
[CBRA Consultation Flowchart 2018 02 01.pdf](#)

Sarah is cc'd and will reply with additional materials, but existing public CBRA guidance is below. Many of these are links to webpages and tools. Printed materials are attached.

CBRA Guidance Following Hurricane Dorian

After a Presidentially-declared disaster, the Federal Emergency Management Agency (FEMA) and other federal agencies make expenditures and provide financial assistance to help communities recover and rebuild. Most federal funding for disaster relief is prohibited within the CBRS, with some exceptions (including certain emergency actions). Helpful information is available on our website, including: the [CBRS mapper](#), [GIS data](#), [CBRS in/out documentation](#), a [CBRA consultation fact sheet](#), and additional information about the [CBRA consultations](#) process. For assistance, please contact the local [FWS Ecological Services Field Office](#).

--

She/Her/Hers | Charisa.Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

The CBRS Validation Tool and Property Determinations

How to Determine Whether an Area is Located within the CBRS

The Coastal Barrier Resources Act (CBRA) of 1982 and subsequent amendments (16 U.S.C. 3501 et seq.) established the John H. Chafee Coastal Barrier Resources System (CBRS), a defined set of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The CBRS units are depicted on a set of maps that is maintained by the U.S. Fish and Wildlife Service (Service). Within the CBRS, most new Federal expenditures and financial assistance, including Federal flood insurance through the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP), are prohibited.

Federal agencies may require documentation indicating whether or not a property or project site is within the CBRS before they approve Federal funding or financial assistance in areas that contain CBRS units. The Service provides two ways to obtain such documentation: the "CBRS Validation Tool" (accessible through the CBRS Mapper) or a "CBRS Property Determination" (an official letter issued by the Service).

CBRS Validation Tool

The CBRS Validation Tool is an automated tool accessible through the [CBRS Mapper](#) that allows any user to select a particular location and produce a document entitled "CBRS Mapper Documentation" which indicates whether that location is within or outside of the CBRS. For locations within the CBRS, the documentation produced by the tool indicates the [flood insurance prohibition date](#) and the [System Unit establishment date](#) (where applicable).

This documentation can be used to either obtain flood insurance through the NFIP for eligible structures or to otherwise document a location's status within or outside of the CBRS for other purposes (e.g., real estate transactions



East Timbalier Island Unit S05.

or applications for Federal financial assistance).

Please note that the CBRS Validation Tool **will not** provide in/out CBRS documentation for locations that are within the CBRS Buffer Zone (i.e., areas within about 20 feet of a CBRS boundary). Such locations require a CBRS Property Determination letter from the Service (see below for additional information).

Who can use the CBRS Validation Tool?

The CBRS Validation Tool can be used by anybody needing to produce documentation indicating that a particular property, project site, or area is within or outside of the CBRS. Common users may include property owners and buyers; insurance and real estate agents; lenders; flood determination providers; floodplain managers; engineers and surveyors; and local, state, and Federal officials.

CBRS Property Determinations

A CBRS Property Determination is an official letter from the Service that indicates whether a specific property

or project site is located within or outside of the CBRS. **The Service will only provide such determinations for areas within the CBRS Buffer Zone (i.e., properties that are within 20 feet of a CBRS boundary as depicted in the [CBRS Mapper](#)).** This includes structures bisected by the CBRS boundary. All other locations should be verified using the CBRS Validation Tool described above.

The Service's determination is based upon materials provided by the requester and the [official CBRS map](#) of the area. The Service's response letter contains an in/out determination and the prohibition date for Federal flood insurance if the property is located within the CBRS.

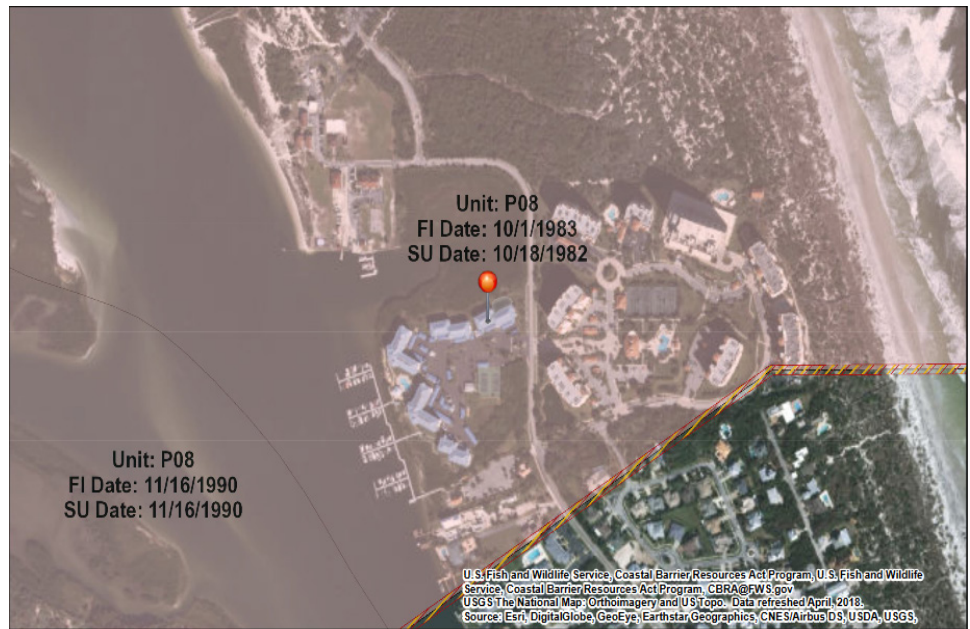
What Materials are Required for a CBRS Property Determination?

In order for the Service to make a property determination, the requester should submit a valid address along with the output from the CBRS Validation Tool indicating that the location is within the CBRS Buffer Zone. The requestor should also submit any additional documentation necessary to help the Service positively confirm the location of

the property, such as a map showing the location of the property, a property record card, survey, deed, and/or elevation certificate.

How do I Request a CBRS Property Determination?

All interested parties, except insurance agents, may submit property determination requests for locations within the CBRS Buffer Zone directly to the Service's Headquarters Office at CBRADeterminations@fws.gov. Insurance agents should send requests for CBRS determinations to NFIP Direct, or the NFIP Write Your Own insurer to whom the application for flood insurance coverage is being made. The insurer will send the request to the NFIP Bureau & Statistical Agent, who will in turn submit the case to the Service for an official determination.



Example of CBRS Validation Tool in CBRS Mapper.

Additional Links and Resources

- Official CBRS Maps and Statewide Locator Maps: <https://www.fws.gov/cbra/maps/index.html>
- CBRS Mapper and CBRS Validation Tool: <https://www.fws.gov/cbra/maps/mapper.html>
- CBRS Validation Tool User Guide: <https://www.fws.gov/cbra/documents/CBRS-Validation-Tool-User-Guide.pdf>
- Information about CBRS Documentation/Determinations: <https://www.fws.gov/cbra/Documentation.html>
- CBRA's Federal Spending Prohibitions: <https://www.fws.gov/cbra/CBRA-Prohibitions.html>
- CBRA and Federal Flood Insurance: <https://www.fws.gov/cbra/flood-insurance.html>
- CBRA Glossary: <https://www.fws.gov/ecological-services/about/glossary.html#CBRA>
- FEMA Flood Insurance Manual: <http://www.fema.gov/flood-insurance-manual>

U.S. Fish & Wildlife Service
Ecological Services
5275 Leesburg Pike
Falls Church, VA 22041
703-358-2171
www.fws.gov/cbra





U.S. Fish & Wildlife Service

Coastal Barrier Resources Act

Consultation Guidance for Federal Agencies

The Coastal Barrier Resources Act (CBRA) of 1982 and subsequent amendments ([16 U.S.C. 3501 et seq.](#)) established the John H. Chafee Coastal Barrier Resources System (CBRS), a defined set of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The CBRS units are depicted on a set of maps that is maintained by the U.S. Fish and Wildlife Service (Service). With some exceptions, **no new Federal expenditures or financial assistance may be made available for any purpose within the System Units of the CBRS, including: construction or purchase of roads, structures, facilities, or related infrastructure; and most projects to prevent the erosion of, or otherwise stabilize, any inlet, shoreline, or inshore area. Most new Federal flood insurance is also prohibited within the CBRS.**

The purposes of the CBRA 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...” (16 U.S.C 3501(b)). **CBRA does not prohibit the expenditure of private, state, or local funds within the CBRS.** Additionally, CBRA does not prevent Federal agencies from issuing permits or conducting environmental studies.

Types of CBRS Units

The CBRS contains two types of units, “System Units” and “Otherwise Protected Areas” (OPAs). OPAs are denoted with a “P” at the end of the unit number (e.g., FL-64P). While the full suite of restrictions on Federal expenditures applies within System Units, the only Federal spending prohibition within OPAs is on Federal flood insurance. CBRA does not



Marsh restoration at Blackwater National Wildlife Refuge, Maryland.

prohibit any other type of Federal expenditures or financial assistance within OPAs. **Consultation with the Service is not required for proposed actions carried out within an OPA.** However, prior to commitment of disaster relief funds, Federal agencies should disclose to eligible applicants information about an OPA designation and requirements or restrictions related to flood insurance.

CBRA's Exceptions

Federal agencies, after consultation with the Service, may make Federal expenditures and financial assistance available within System Units for activities that meet one of the CBRA's exceptions. Examples of activities that may meet one of the exceptions include:

- The maintenance, replacement, reconstruction, or repair of **publicly owned roads, structures, or facilities**
- **Military activities** essential to national security
- The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities**
- Projects for the study, management, protection, and enhancement of **fish and wildlife resources**
- Acquisitions of **fish and wildlife habitat** (including floodplain buyouts)
- Projects under the **Coastal Zone Management Act** and the **Land and Water Conservation Fund**
- **Recreational projects** (e.g., construction of a bike path or bird watching platform)
- **Scientific research**
- Actions necessary to alleviate an **immediate emergency** in a
- Exploration, extraction, or transportation of certain **energy resources**
- The maintenance or improvement of existing **Federal navigation channels** (including the Intracoastal Waterway) and related structures

Presidentially declared disaster (e.g., debris removal, provision of emergency food and shelter, restoration of utilities)

- **Nonstructural projects for shoreline stabilization** (e.g., planting of dune grass and beach nourishment)

See [Title 16 Section 3505](#) of the U.S. Code for the full text and conditions of the exceptions.

CBRA Consultation Process

Any Federal agency proposing to spend funds within a System Unit of the CBRS must send a written request to the appropriate U.S. Fish and Wildlife Service [Ecological Services Field Office](#) with a description of the project or action, the location of the project or action, the particular CBRA exception(s) that applies to the project or action, an explanation of how the project or action meets that exception(s), and any other supporting materials.

The Service has developed a [flow chart](#) to assist Federal agencies in determining whether a CBRA consultation is necessary, and an [inter-agency CBRA consultation template](#) to help facilitate the consultation process. Federal agencies may submit the template and any additional documentation to the appropriate field office to fulfill CBRA's consultation



Road damage in Chincoteague National Wildlife Refuge, Virginia.

requirement. **Any response from the Service to a CBRA consultation request is in the form of an opinion only.** The Service has not been granted veto power. The responsibility for complying with CBRA and the final decision regarding the expenditure of funds for a particular action or project rests with the Federal funding agency. To locate the appropriate Service field office, visit: <https://www.fws.gov/offices>.

Where to Find CBRS Maps and Data

The Service's website contains CBRS

maps, data, and tools that can help determine whether properties and project sites are located within the CBRS.

Official CBRS maps and statewide locator maps: <https://www.fws.gov/cbra/maps/index.html>

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

CBRS Validation Tool (allows users to produce documentation that indicates whether a specific area is within or outside of the CBRS): <https://www.fws.gov/cbra/documentation.html>

Digital CBRS Data (downloadable shapefile, Web Map Service, and ArcGIS Representational State Transfer Service): <https://www.fws.gov/cbra/maps/boundaries.html>



Freshly planted grass to help with beach erosion at Bon Secour National Wildlife Refuge, Alabama.

**U.S. Fish & Wildlife Service
Ecological Services
5275 Leesburg Pike
Falls Church, VA 22041
703-358-2171
www.fws.gov/cbra**

March 2019

ATTACHMENT IS LOCKED

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From: [Beaumont, Melissa](#)
To: [Katie Mills](#)
Subject: Fwd: Please print for PF (email and attachments)
Date: Wednesday, October 23, 2019 11:46:51 AM
Attachments: [CBRS-Validation-Tool-and-Property-Determinations-Fact-Sheet.pdf](#)
[CBRA-Consultation-Fact-Sheet-03292019.pdf](#)
[CBRA Consultation Flowchart 2018 02 01.pdf](#)

Sharing in case this is interesting for you!

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

From: **Morris, Charisa** <charisa_morris@fws.gov>
Date: Wed, Oct 23, 2019 at 11:37 AM
Subject: Please print for PF (email and attachments)
To: Roslyn Sellars <Roslyn_Sellars@fws.gov>, Maureen Cooke <maureen_cooke@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Quamme, Sarah
<Sarah_Quamme@fws.gov>

Sarah is cc'd and will reply with additional materials, but existing public CBRA guidance is below. Many of these are links to webpages and tools. Printed materials are attached.

CBRA Guidance Following Hurricane Dorian

After a Presidentially-declared disaster, the Federal Emergency Management Agency (FEMA) and other federal agencies make expenditures and provide financial assistance to help communities recover and rebuild. Most federal funding for disaster relief is prohibited within the CBRS, with some exceptions (including certain emergency actions). Helpful information is available on our website, including: the [CBRS mapper](#), [GIS data](#), [CBRS in/out documentation](#), a [CBRA consultation fact sheet](#), and additional information about the [CBRA consultations](#) process. For assistance, please contact the local [FWS Ecological Services Field Office](#).

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She/Her/Hers | Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Morris, Charisa](#)
To: [Margaret Everson](#)
Cc: [Melissa Beaumont](#); [Roslyn Sellars](#); [Maureen Cooke](#)
Subject: Fwd: Please print for PF (email and attachments)
Date: Monday, October 28, 2019 12:25:15 PM
Attachments: [CBRA Hurricane Guidance Memo to R2 and R4 12.12.17 .pdf](#)
[Directors Order 10 - 8.12.1983.pdf](#)
[FRN 10.6.83.pdf](#)
[FRN 11.5.92.pdf](#)
[CBRA Consistency Consultation Guidance 10.2.1991.PDF](#)
[CBRA-Consultation-Fact-Sheet-03292019.pdf](#)
[CBRA Consultation Flowchart 2018 02 01.pdf](#)
[CBRA Inter-Agency Consultation Template.zip](#)

Margaret-

A more thorough CBRA answer is provided below, with Director's Order, Director's Memo, FR notices, and manual chapter attached.

Let me know if you need anything else on this front,
Charisa

PS- Roslyn and Maureen, please put the DO, DM, and FR notices into the PF - thanks!

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

From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Mon, Oct 28, 2019 at 10:45 AM
Subject: Re: Please print for PF (email and attachments)
To: Charisa Morris <charisa_morris@fws.gov>
Cc: Phinney, Jonathan <jonathan_phinney@fws.gov>, Sarah Quamme <sarah_quamme@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>

Hi Charisa,

If Margaret is interested in CBRA guidance related to consultations, below is a list of documents (either attached or hyperlinked) that may be helpful.

- **1983 Federal Register Notice** (this was a "rule-related notice") set forth the Department's general statement of policy and advisory guidelines regarding the provisions of CBRA that address limitations on federal expenditures and financial assistance, and exceptions to the limitations.
- **1983 Director's Order** delegated authority for CBRA consultations to the Regions.
- **1991 Director's Memo** provided guidance to the Regions for CBRA consultations with federal agencies.
- **1992 Federal Register Notice** (this was a "rule-related notice and request for comments"; the final guidelines were not published) set forth the Service's general statement of policy and advisory guidelines regarding the provisions of the Coastal Barrier Improvement Act (CBIA) of 1990 that address limitations on federal expenditures and financial assistance, and exceptions to the limitations.
- **1995 [Service Manual Chapter](#)** provided Service responsibilities for

administering CBRA as modified by the CBIA.

- **2017 Hurricane Guidance Memo** provided CBRA guidance to the Regions following Hurricanes Harvey, Irma and Maria, and Nate.
- **2019 CBRA Fact Sheet** provides consultation guidance for federal agencies.
- The [CBRA website](#) contains information on the consultation process, including a CBRA **consultations flowchart** to assist federal agencies in determining whether a consultation is necessary, and an interagency CBRA **consultation template** to help facilitate the consultation process.

Please note that the Service also has responsibilities related to CBRS mapping (i.e., maintaining and updating the official maps) and CBRS in/out determinations (i.e., determining whether particular properties and structures are located "in" or "out" of the CBRS). If Margaret is interested in guidance related to these other CBRA responsibilities, please let me know and we'll provide you with additional information.

Thanks!

Katie

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

On Sat, Oct 26, 2019 at 9:15 AM Charisa Morris <charisa_morris@fws.gov> wrote:

Thank you for the prompt! Just confirmation that we have no official guidelines, handbooks, policy, or regs. Just guidance for the mapper and some online fact sheet/pages. Is that correct?

Sent from my iPhone

On Oct 25, 2019, at 5:41 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

Charissa,

Do you need anything else from me on CBRA background?

JPh

On Thu, Oct 24, 2019 at 3:17 PM Phinney, Jonathan
<jonathan_phinney@fws.gov> wrote:

Charisa,

CBRA has a lot of guidances, unfortunately. I have attached a report that has

the CBRA mapping guidance in Chapter 6 (pages 37-46).

Let me and the CBRA Project Lead, Katie Niemi (copied here), know if there is another guidance that Margaret is requesting.

Note the report is too large to send as an attachment so I have sent it as a Google link.

Regards,

Jonathan



[John-H-Chafee-CBRS-Digital-Mapping-Pilot-Projec...](#)

On Thu, Oct 24, 2019 at 2:50 PM Morris, Charisa

<charisa_morris@fws.gov> wrote:

Hi Jonathan-

Margaret simply wanted to know what existing guidance the USFWS already has re: CBRA. Did my original email come through, and if so, do you think it answers her question?

Thanks!

Charisa

On Thu, Oct 24, 2019 at 2:12 PM Phinney, Jonathan

<jonathan_phinney@fws.gov> wrote:

Hi Charisa,

I am trying to locate the information that you requested from Sarah Quamme yesterday on CBRA.

Can you give me more information on the need? We have an overview ppt of the program. We have a mapping procedures document (actually a chapter) that can be a stand alone document. Or does the audience want a hard copy on the background of CBRA that is in the links below.

Happy to discuss by phone if desired.

Let me know.

Jonathan

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

From: **Quamme, Sarah** <sarah_quamme@fws.gov>

Date: Wed, Oct 23, 2019 at 11:42 AM

Subject: Fwd: Please print for PF (email and attachments)

To: Jonathan Phinney <jonathan_phinney@fws.gov>

Hi Jonathan - I just got a visit from Charisa on this. She wanted to know if there was any other "standalone guidance" on CBRA beyond what is referenced in this blurb? Can you help me out with this?

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

From: **Morris, Charisa** <charisa_morris@fws.gov>

Date: Wed, Oct 23, 2019 at 11:37 AM

Subject: Please print for PF (email and attachments)

To: Roslyn Sellars <Roslyn_Sellars@fws.gov>, Maureen Cooke <maureen_cooke@fws.gov>

Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Quamme, Sarah <Sarah_Quamme@fws.gov>

Sarah is cc'd and will reply with additional materials, but existing public CBRA guidance is below. Many of these are links to webpages and tools. Printed materials are attached.

CBRA Guidance Following Hurricane Dorian

After a Presidentially-declared disaster, the Federal Emergency Management Agency (FEMA) and other federal agencies make expenditures and provide financial assistance to help communities recover and rebuild. Most federal funding for disaster relief is prohibited within the CBRS, with some exceptions (including certain emergency actions). Helpful information is available on our website, including: the [CBRS mapper](#), [GIS data](#), [CBRS in/out documentation](#), a [CBRA consultation fact sheet](#), and additional information about the [CBRA consultations](#) process. For assistance, please contact the local [FWS Ecological Services Field Office](#).

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She/Her/Hers | Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

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Sarah Joan Quamme
Chief, Branch of Domestic Listing
U.S. Fish & Wildlife Service
703-358-1796

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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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the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348
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Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent
matters, please dial cell: 301-875-8937



United States Department of the Interior

FISH AND WILDLIFE SERVICE



DEC 12 2017

In Reply Refer To:
FWS/AES-DBTS-BGMTS/066572

Memorandum

To: Assistant Regional Directors for Ecological Services, Regions 2 and 4

From: Assistant Director, Ecological Services *Ced F*

Subject: Coastal Barrier Resources Act Guidance following Hurricanes Harvey, Irma, Maria, and Nate

After a Presidentially-declared disaster, the Federal Emergency Management Agency (FEMA) and other Federal agencies make expenditures and provide financial assistance to help communities recover and rebuild. Most Federal funding for disaster relief is prohibited within the John H. Chafee Coastal Barrier Resources System (CBRS), with some exceptions. This guidance is provided to assist your region and field offices that are fulfilling the U.S. Fish and Wildlife Service's (Service) responsibilities under the Coastal Barrier Resources Act (CBRA) following Hurricanes Harvey, Irma, Maria, and Nate. For areas impacted by the hurricanes that contain CBRS units, it is advisable that Service field offices contact FEMA's Joint Field Offices as soon as possible so that the Federal officials are aware of the CBRA requirement to consult with the Service prior to expending disaster assistance funds for certain actions or projects within the CBRS (16 U.S.C. 3505). Hurricane response and recovery efforts are a priority for the Service, and it is important that actions are taken to ensure that consultation efforts do not unnecessarily delay response and recovery efforts.

Where to Find CBRS Maps and Data

The Service's website contains CBRS maps and data that can be used by public officials, property owners, and other stakeholders to help determine whether properties and project sites are located within the CBRS.

Official CBRS maps and statewide locator maps: <https://www.fws.gov/cbra/maps/index.html>

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

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

CBRS Property Determinations

FEMA and other agencies submit requests to the Service to determine whether or not certain properties are located within the CBRS for flood insurance and other purposes. **Effective October 1, 2017, the CBRA Staff in Headquarters began processing all new CBRS in/out determinations (regardless of the property's distance from a CBRS boundary or whether the property is located in an area affected by a Hurricane).** New requests may be sent to cbradeterminations@fws.gov (this dedicated email account will be administered by CBRA Headquarters staff).

CBRA Consistency Consultations

No new expenditures or financial assistance may be made available under authority of any Federal law for any purpose within the System Units of the CBRS, including: construction or purchase of roads, structures, facilities, or related infrastructure, and most projects to prevent the erosion of or otherwise stabilize any inlet, shoreline, or inshore area. However, the appropriate Federal officer, after consultation with the Service, may make Federal expenditures and financial assistance available within System Units for activities that meet one of the CBRA's exceptions (16 U.S.C. 3505). CBRA consistency consultations are generally handled by the Ecological Services Field Offices. The Field Offices may be assisted by Headquarters and Regional Offices when questions or conflicts arise.

There are two types of units within the CBRS, System Units and Otherwise Protected Areas (OPAs). OPAs are denoted with a "P" at the end of the unit number (e.g., "FL-64P"). The only Federal spending prohibition within OPAs is on Federal flood insurance; other Federal expenditures are permitted.

Consultation with the Service is not needed if the proposed action or project is located within an OPA. However, agencies providing disaster assistance that is contingent upon a requirement to purchase flood insurance after the fact are advised to disclose the OPA designation and information on the restrictions on Federal flood insurance to the recipient prior to the commitments of funds.

The Service's response to a consultation request is in the form of an opinion only. The funding agency is responsible for complying with the CBRA. Attached is an inter-agency CBRA consultation template that may be shared with other Federal agencies to help streamline the consultation process.

Consultations for FEMA Disaster Assistance – FEMA's regulations implementing the CBRA for disaster assistance can be found at 44 CFR 206.340-349 (attached).

Emergency Work – Federal expenditures and financial assistance for most emergency actions in a Federally-declared disaster area which are essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 5170a, 5170b, and 5192 of 42 U.S.C. are allowed within the CBRS (16 U.S.C. 3505(a)(6)(E)), but are limited to those actions necessary to alleviate the emergency (i.e., the immediate threat to life and property). These actions must also be consistent with the three purposes of the CBRA in order to meet the exception. Those 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 coastal barriers. Examples of these types of assistance include but are not limited to: the demolition of unsafe structures which endanger the public; removal of debris from public property; emergency restoration of essential community services such as electricity, water, and sewer; relocation of individuals out of danger; and provision of food, water, medicine, emergency shelter, and other essential needs.

Actions in this category are intended to be so urgent in nature that they must be accomplished immediately and therefore cannot be subjected to advance consultation. This type of emergency work supports only the existing population (at the time of the disaster) and pre-disaster uses. It does not provide for, or encourage, any expansion of facilities and infrastructure or their increased capacity. Additionally, this emergency work generally does not involve work on or affecting the natural features of the land (e.g., 5-year emergency berms or flood control structures to protect against future storms). Since these actions must be accomplished immediately, they do not require advance consultation, but rather after-the fact written notification is provided to the Service as soon as practicable following the emergency.

Permanent Restoration and Hazard Mitigation – Most Federal funding for permanent restoration and hazard mitigation is prohibited within the CBRS unless the action or project meets one of the exceptions to the CBRA (16 U.S.C. 3505). FEMA's regulations (see attached 44 C.F.R. 206.348) require consultation with the Service before approving any permanent restoration assistance in a System Unit. The Service has 12 working days to respond to FEMA's permanent restoration consultation requests.

Intra-Service Consultations – Intra-Service consultation helps ensure that the Service, itself, is in compliance with the requirements of the CBRA. Any Service program (e.g., Migratory Birds, Ecological Services, Refuges, etc.) expending Federal funds within System Units, either directly or indirectly (e.g., pass-through funds) should either self-certify that the proposed action or project is consistent with the CBRA or consult with their regional Coastal Barriers Coordinator prior to the obligation of funds to ensure that the proposed action or project complies with the CBRA.

Additional resources for CBRA consultations are available at <https://www.fws.gov/cbra> under "Project Consultations."

Regional and Headquarters CBRA Contacts

If you have any questions concerning the Service's CBRA responsibilities, please contact Martha Balis-Larsen at (703) 358-2314 or the following individuals: Denise Baker (Region 2) at (505) 248-6681, Cynthia Bohn (Region 4) at (404) 679-7122, or Katie Niemi (Headquarters) at (703) 358-2071.

Attachments



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

Date: AUG 12 1983

DIRECTOR ORDER NO. 10

Subject: Delegation of Authority - Coastal Barriers

Section 1. Purpose. This order delegates authority for interagency consultations under section 6 of the Coastal Barrier Resources Act (CBRA).

Section 2. Scope. This delegation applies to the regional directors for regions 2, 4, and 5.

Section 3. Objective. This order delegates authority implementing section 6 of the CBRA until consultation procedures and permanent delegations are developed and issued.

Section 4. Authority.
A. Coastal Barrier Resources Act, Pub. L. 97-348.
B. Secretarial Order No. 3093.

Section 5. Responsibility. Regional directors for regions 2, 4, and 5 must exercise their authority in accordance with 4 AM 1.6A, and may redelegate such authority, as specified in section 7 of this order, in accordance with 4 AM 3.

Section 6. Effective date. This order is effective immediately, and will remain in effect until rescinded.

Section 7. Delegation.

A. Regional directors for regions 2, 4, and 5 may issue final consultation comments under section 6 of the CBRA for activities that do not specifically require the Service Washington Office, other Federal agency headquarters, or Office of Management and Budget involvement on such activities. The Service Coastal Barriers Coordinator may be consulted to aid in determining if specific projects require Washington Office approval.

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- B. The authority delegated in Section 7A above, may be redelegated to assistant regional directors for habitat resources and ecological services field supervisors in regions 2, 4, and 5 in accordance with 4 AM 3. Copies of such redelegations should be provided to the Service Coastal Barriers Coordinator.

Robert A. Gutzger
Director

File in accordance with 1 AM 1.5A

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****43 CFR Subtitle A****Coastal Barrier Resources Act;
Advisory Guidelines****AGENCY:** Fish and Wildlife Service,
Interior.**ACTION:** Rule-related notice.

SUMMARY: This document sets forth the Department of the Interior's (Department) general statement of policy and advisory guidelines regarding the provisions of the Coastal Barrier Resources Act (Act, CBRA) that address limitations on Federal expenditures and financial assistance, and exceptions to the limitations.

DATES: These guidelines are effective upon publication. The prohibitions on new Federal financial expenditures and assistance other than flood insurance were effective upon enactment of CBRA (October 18, 1982). The prohibition on the sale of new Federal flood insurance for new structures or substantial improvements will be effective October 1, 1983. The Federal Emergency Management Agency, which administers the National Flood Insurance Program, issued a final rule on this provision on August 16, 1983 (48 FR 37036).

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, Coastal Barriers Coordinator, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202-343-2618).

SUPPLEMENTARY INFORMATION: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (Pub. L. 97-348). The law establishes the Coastal Barrier Resources System as referred to and adopted by Congress, and prohibits all new Federal expenditures and financial assistance within the units of the System, except that a Federal agency may, after consultation with the Secretary of the Interior, effect such expenditures or assistance according to the specific exceptions of Section 6 of CBRA. These provisions of the Act became effective upon it being signed into law. The Act also amends and conforms the Federal flood insurance provisions of the Omnibus Budget Reconciliation Act of 1981 (OBRA) pertaining to undeveloped coastal barriers. The statutory ban on the sale of new Federal flood insurance for new construction or substantial improvements in these areas will go into effect on October 1, 1983.

The Department published proposed guidelines in the **Federal Register** on

April 25, 1983 (48 FR 17592). Changes in these final guidelines result from comments received concerning the proposed guidelines. Secretarial Order 3093 delegated responsibility for Section 6 to the Fish and Wildlife Service (Service) on April 28, 1983.

The guidelines elaborate on the definitions of expenditures and financial assistance and "new" expenditures and financial assistance and prescribe guidelines for consultation with the Service. As stated by the Director of the Office of Management and Budget in a letter dated March 7, 1983, to the Secretary: "OMB fully agree(s) that questions regarding the limitations on financial expenditures be interpreted by all agencies in a consistent manner. Therefore OMB will look to the Department to develop guidelines and definitions which all agencies, including OMB, can use."

The Service intends that the final advisory guidelines will direct agencies in limiting expenditures and financial assistance within the System in conformance with the dictates of Section 5 and 6 of CBRA. The Service is aware, though, that the guidelines cannot address each particular question that may arise in implementing CBRA with respect to particular activities within the System. The Service expects that the more general directives of the guidelines will be supplemented as a result of bilateral discussion that should be held between each affected agency and the Service as to the particular activities each agency is responsible for and as to the procedures for consultation on future activities.

Discussion of Comments Received

In response to the notice of proposed advisory guidelines, written comments were received from eleven respondents. All were considered in the final guidelines. The following is a discussion of these comments and the Department's responses.

Two respondents were of the opinion that the prohibition on Federal financial assistance should include income tax deductions for casualty loss and interest on Federal mortgages.

We disagree. There is absolutely no indication in the legislative history of CBRA that Congress had any intention of effecting such change in the tax treatment of activities within the System. Congress would not have made such a change in the tax laws without discussion. Moreover, the basic scheme of CBRA, evidenced clearly in the Section 6(a) consultation process, is intended to affect particular decisions by Federal agencies to provide expenditures and financial assistance

for activities within the System. These decisions are different from the general grant by the Federal government of income tax deductions for various items.

Section 6(a)(3) of the Act excepts " * * the maintenance, replacement, reconstruction or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities that are essential links in a larger network or system * * " from the prohibitions on Federal expenditures or financial assistance. In the proposed guidelines, we interpreted "facilities" to be limited to facilities related to roadworks. Five commentators are of the opinion that the "or facilities" separated roads from utilities, and that it was not the intent of Congress, as evidenced in the legislative history, to exclude repair or replacement of utility systems already in place. After reviewing the comments and further evaluation of the legislative history and Congressional intent, we agree that utilities should be included as part of Sections 6(a)(3) and 6(a)(6)(F).

Several commenters questioned whether the proposed guidelines gave the Department of Defense too much leeway in its determinations of which expenditures are "essential to national security" and therefore exempt from the section 5 prohibitions. The legislative history of Section 6(a)(4) specifically provides that "this exemption should be read broadly and that the Department of Defense should be the judge of the essentiality of the action" (House Report 97-841). Moreover, the Conference Report (97-928) states that: "the determination as to whether military activities are essential to national security must be made in accordance with existing law and procedure." Thus, Congress intended no expansion of current statutory and regulatory standards for determining what is essential to the national security. In addition, Section 6(a) of CBRA does not exempt the Department of Defense from consulting with the Service prior to making expenditures or financial assistance available within the System. The Department of Defense will, however, be the judge of which military activities are essential to national security and therefore excepted from the general prohibition in Section 5 of CBRA.

The section on the consultation process also generated some comment. Two Federal agencies interpret the Act to require only a single consultation with the Service covering the whole range of their activities impacted by CBRA. We are of the opinion that this was not the intent of Congress. A

blanket exemption would not adequately satisfy the oversight responsibilities of the Department to ensure the minimum necessary impact on coastal barriers. The final guidelines are clarified to emphasize the need for consultation prior to expenditures or financial assistance for each excepted activity.

Five commenters contended that consultation with the Department was mandatory and took exception to the position in the proposed guidelines that Federal agencies "should" consult with the Department with respect to expenditures and assistance under Section 6 of CBRA. Additional review of the legislative history supports the view of these commenters. For instance, the Conference Report states, "The Conferees agreed to accept the House provision which *requires* the appropriate Federal officer to consult with the Secretary before making any Federal expenditures or financial assistance available under Section 6 H.R. Rep. No. 928, 97th Cong., 2nd Sess. 13 (1982) (emphasis added). We therefore agree that consultation itself with the Department with respect to expenditures and financial assistance according to the Section 6 exceptions criteria is mandatory and have so changed the final guidelines. But while consultation itself is mandatory, that does not mean that it must be conducted in any particular manner. Thus, these guidelines leave it up to the various Federal agencies to develop acceptable consultation procedures with the Service that best fit their various programs. Such procedures may vary from agency to agency.

1. *Environmental Effects:* These guidelines establish a general framework within which Federal agencies can satisfy their consultation responsibilities with the Service prior to making an expenditure on, or providing assistance to, activities excepted under Section 6 of CBRA. The guidelines merely establish a general framework for the exchange of information and advice among Federal agencies in order to insure compliance with the requirements of CBRA. The guidelines, in and of themselves, therefore, will not create substantive impacts upon the human environment. As for the activities that will be the subject of consultation, such activities generally continue the status quo or provide localized environmental benefits or localized emergency disaster assistance. Moreover, to the extent that an activity does affect the quality of the human environment, appropriate NEPA documentation will be prepared by the

responsible Federal agency for that particular activity. Therefore, the Department has determined that the consultation process addressed by these guidelines will have no significant impact on the quality of the human environment which would require the preparation of an environment impact statement.

2. *Statement of Effects:* The Department of the Interior has determined that these interpretive guidelines are not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. These guidelines will result in minimal cost to Federal agencies and some economic effects on local firms and businesses to the extent that they are engaged in activities excepted by section 6 of CBRA and paid for or assisted by Federal funds.

3. *Paperwork Reduction Act:* These interpretive guidelines do not contain information collection requirements and thus the requirements of the Paperworks Reduction Act do not apply. This is because all information required in the consultation process is to be submitted to the Service by the Federal agency involved.

4. *Authorship Statement:* This document has been prepared by Frank McGilvrey of the U.S. Fish and Wildlife Service.

5. *Identification of Subjects:* An identification of subjects is not necessary because this document is not designed to be codified in the Code of Federal Regulations.

Coastal Barrier Resources System: Prohibition on New Federal Expenditures and Procedures for Consultation

I. Definitions and Limitations

Financial Assistance

The Act, with certain exceptions, prohibits Federal expenditures and financial assistance for development within the Coastal Barrier Resources System.

Section 3(3) of CBRA defines "financial assistance" as: "any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance." On October 1, 1983, this definition will also include Federal flood insurance.

Section 5(a) of the Act provides the general prohibition on new Federal expenditures and financial assistance in System units and provides a listing of specifically prohibited expenditures or assistance. Section 5(a) states:

Except as provided in Section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier Resources System, including, but not limited to:

(1) Construction or purchase of any structure, appurtenance, facility or related infrastructure;

(2) Construction or purchase of any road, airport, boat landing facility on, or bridge or causeway to, any System unit;

(3) Assistance for erosion control or other stabilization of any inlet, shoreline, or inshore area, except in certain emergencies.

The Department has identified additional specific examples of Federal program expenditures and financial assistance prohibited in units of the Coastal Barrier Resources System. We interpret the Act to include, but not be limited to, the following programs:

Department of Agriculture

Farmers Home Administration

—Loans for rural disaster relief, water systems, wastewater systems, commercial development, community services, and subdivision development.

Rural Electrification Administration

—Loans for new or expanded electrical systems that would encourage development.

Department of Commerce

Economic Development Administration

—Grants for planning and administering local economic development programs.

Office of Coastal Zone Management

—CEIP grants (coastal energy improvement program).

Department of Defense

U.S. Army Corps of Engineers

—Construction and financial assistance involving beach erosion control, hurricane protection, flood control works, and new or expanded navigation projects.

Department of Energy

—Energy development programs.

Department of Housing and Urban Development

—Block grants for community development.
—Mortgage insurance, housing assistance or rehabilitation subsidy programs.
—Urban Development Action Grants.

Department of the Interior**National Park Service**

—Grants to States for historic preservation, survey, and planning, land acquisition and development of protected areas, and for preparation of State Comprehensive Outdoor Recreation Plans through the Land and Water Conservation Fund (where development of coastal barriers is addressed). (See discussion of Section 6 for exceptions.)

Department of Transportation**Federal Aviation Administration**

—Grants for airport planning and development.

Federal Highway Administration

—Federal assistance to States for highway construction

Urban Mass Transportation Administration

—Capital improvement and operating grants.

Environmental Protection Agency

—Grants for wastewater treatment construction (Sec. 201 grants), water quality management planning (Sec. 208 grants).

Federal Emergency Management Agency

—Federal National Insurance Program.
—Disaster assistance program.

Federal Home Loan Administration

—Guaranteed housing loans.

General Services Administration

—Construction or reconstruction of Federal property.
—Exchange or sale of Federal property for development purposes.

Small Business Administration

—Loans to small businesses for disaster relief, upgrading of water treatment systems, and other purposes.
—Disaster assistance to homeowners.

Veterans Administration

—Guaranteed housing loans.

This list may not be all inclusive. Each Federal agency is responsible for review of its programs to assure compliance with CBRA.

"New" Expenditures

CBRA's limitations on Federal expenditures and financial assistance are only applicable to "new" expenditures or "new" financial assistance. Section 5(a) specifically provides that:

Except as provided in Section 6, no new expenditures or new financial

assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier Resources System . . .

Section 5(b) articulates when an expenditure or financial assistance is established to be "new" and therefore precluded. Section 5(b) provides:

(b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if—

(1) In any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or

(2) No legally binding commitment for the expenditure or financial assistance was made before such date of enactment.

As further established by the legislative history, this subsection creates a dual definition. The concept of new expenditures or new financial assistance is defined in terms of actions that require specific appropriations and actions that do not require specific appropriations.

First, a Federal expenditure or financial assistance that does not rest upon a specific appropriation is new, and therefore precluded, unless a legally binding commitment for the site-specific expenditure or financial assistance was made before October 18, 1982, when the President signed the bill into law. The applicable date for Federal flood insurance is October 1, 1983. General intentions, statements of intent or policy are not adequate. A legally binding commitment is one that establishes a right to the funds in question as a matter of law; that is, the right must be an obligation against the United States. Necessarily, such an obligation must rest upon the availability of appropriations in existence prior to the cut-off date of October 18, 1982, or on specific contract authority to obligate funds of the United States in advance of appropriations. There is no general authority to obligate funds of the United States absent the availability of appropriations from the Congress. Such an obligation would be in violation of the Anti-Deficiency Act.

Second, expenditures or financial assistance with respect to which specific appropriations are required are self-evident. These are discrete Federal expenditures—not operating on a general program appropriation as provided above—that are funded by individual line item reference directly within a specific appropriation act. This is typically done by recitation of a

specific project name. Such a specific appropriation prior to October 18, 1982, permits the Federal expenditure of financial assistance to continue. Absent such a specific appropriation of the funds in question, however, the expenditure or financial assistance would be "new" and would be precluded.

II. Exceptions and Consultation

Section 6 of the Act outlines the specific exceptions to the general prohibition on new Federal expenditures or financial assistance. The law grants exceptions for energy projects which can only be carried out within the System; maintenance of channel improvements; maintenance of roads, structures or facilities that are essential links to a larger network or system; military activities essential to national security; and Coast Guard facilities. In addition to these five specific exceptions, Section 6(a)(6) outlines seven other activities that may be excepted if the activity is consistent with the purposes of the Act.

Section 6(a) of the Act requires the appropriate Federal officer to consult with the Secretary of the Interior before making any Federal expenditures or financial assistance available under the provisions of Section 6. Procedures for consultation follow the discussion of exceptions.

Exceptions

(1) *Energy projects (Section 6(a)(1)).* Federal assistance may be made available for energy projects in or adjacent to coastal areas for "any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body." The legislative history (House Report 97-841) states that "this provision is intended to be read broadly in terms of energy projects. However, the provision should not be interpreted to allow assistance for projects primarily designed to encourage development but which might be carried out in the guise of energy development."

(2) *Channel improvements (Section 6(a)(2)).* Maintenance of existing channel improvements and related structures, such as jetties can continue. The use of disposal sites for dredge materials is included under this exception, so long as the sites are related to, and necessary for, the maintenance of an existing project. Section 6(b) requires that an existing channel improvement or an existing

related structure be funded, in part or totally, before the date of enactment; i.e., the channel must have existed or have had funds appropriated for construction before October 18, 1982. According to the legislative history, this is not a license or authority for construction of new channels.

The legislative history also states that: "the criterion for determining whether Federal assistance would or would not be precluded is the existence of the channel at the time of enactment of the legislation. If it is in existence, or if money has been appropriated for its construction, then any Federal financial assistance for activities to maintain it, including, for example, the complete reconstruction of jetties or other structures, would be permitted. It is also the Committee's intent that, because of the unstable nature of barrier islands, existing channels can be relocated periodically." (House Report 97-841 at page 16).

(3) Roads, Structures or Facilities (Section 6(a)(3)).

Maintenance, replacement, reconstruction, or repair, but not expansion, of publicly owned or publicly operated roads, structures, or facilities that are *essential links in a larger network or system* can continue. This exception differs from that of Section 6(a)(6)(F), which pertain to roads, structures or facilities that may not be essential links in a larger system or network.

The legislative history indicates the Congressional intent to include drains, gutters, curbs and other related roadworks under this exception. The House Report also emphasizes that financial assistance will not be provided for the expansion of such structures, roads or facilities. (House Report 97-840).

The Service interprets "structures or facilities" to include public utilities. Section 6(a)(6)(F) is also applicable to public utilities that are not essential links in a larger system.

(4) Military activities (Section 6(a)(4)). Military activities *essential to national security* are excepted from the ban on Federal expenditures, but not from the requirement to consult. The Defense Department will be the judge of what is essential to national security, but, as stated in Conference Report 97-928, its "determination as to whether military activities are essential to national security must be made in accordance with existing law and procedures." The Defense Department still has the responsibility to consult with the Service with respect to any expenditures or financial assistance within the System

(5) Coast Guard (Section 6(a)(5)). Expenditure of funds or provision of financial assistance for the construction, maintenance, operation and rehabilitation of Coast Guard facilities can continue.

(6) Conservation, navigation, recreation, scientific research, disaster relief, roads, shoreline stabilization (Section 6(a)(6)). The following actions or projects are excepted, *providing the expenditure is consistent with the purposes of the Act*, which are detailed in Section 2(b) (i.e., to minimize loss of human life, wasteful Federal expenditures and damage to fish, wildlife and other natural resources):

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

The legislative history states: "This exception recognizes the value of System units as fish and wildlife habitats and is in complete conformity with the purposes of the legislation. It is intended that the full range of Federal financial assistance authorized for protecting and managing fish and wildlife habitats will continue to be available. This includes, where necessary, assistance for stabilization projects to protect valuable habitats. Federal funds for projects involving facilities for fish and wildlife-related recreation would also be allowed. It is intended by the Committee that any development of recreational facilities be consistent with the purposes of the legislation." (House Report 97-841.)

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

The legislative history indicates that, in almost every instance, placement and use of such aids and devices on undeveloped coastal barriers would be appropriate. (House Report 97-841.)

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.)

Clearly the legislative history applied to Section 6(a)(6)(A) would be generally applicable to this provision as well. Recreational use of system units should be encouraged so long as it is accomplished consistent with the purposes of the Act.

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife

and other research, development, and applications.

The Department interprets this part to include archeological surveys undertaken pursuant to existing law and procedures.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

Section 305 of the Disaster Relief Act authorizes the President, in a declared emergency, to provide any or all of the assistance available under the Act as the President deems appropriate.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities. There is a distinction between this exception, which may be applied if the action is consistent with the purposes of the Act, and the exception cited in Section 6(a)(3), which requires that the road, structure or facility be one that is an essential link in a larger network or system. Thus a road which otherwise qualifies for a Section 6(a)(3) exemption need not satisfy the additional requirement that its construction is consistent with the purposes of CBRA.

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

The legislative history cites the planting of dune grass or other beach nourishment activities as examples of these projects.

III. Consultation

Federal agencies must consult with the Fish and Wildlife Service and allow the opportunity to provide written comment prior to making Federal expenditures or financial assistance available for an action excepted under Section 6 of CBRA within a CBRS unit. Compliance with this provision of the law rests initially on the Federal officer responsible for making the funds or financial assistance available for a permitted action. The Service's responsibility is to respond to a consultation request by providing technical information and comments on the question of consistency with CBRA. The final determination whether action permitted under this section is consistent with the purposes of the Act rests with the consulting agency.

Consultation Process

The consultation process should be carried out at two operational levels.

First, discrete projects identified in an agency's budget proposal should be submitted to the Fish and Wildlife Service, Department of Interior, for comment at least 45 days prior to transmittal to OMB. The Fish and Wildlife Service will acknowledge receipt of the transmittal, review the project, consult with the agency as necessary and provide a written response within 30 days.

On projects that are subject to provisions of The National Environmental Policy Act, consultation should be accomplished early enough to permit the results to be included in the draft environmental impact statement or other appropriate environmental documents.

Second, consultation requests for projects such as channel maintenance or highway repair or other expenditures that are managed by agency field-level officials should be made through the appropriate Regional Director of the Fish and Wildlife Service. (Regional Office addresses are appended).

The Act provides for two levels of exception. Section 6(a)(1-5) clearly allows certain designated Federal activities. When consulting on these activities, the Service will provide technical information and register an opinion as to whether the activity is one which the clause allows.

Section 6(a)(6) provides an additional caveat for the included list of exceptions that require that the action "... is consistent with the purposes of this Act."

For activities falling under this subsection, the Service will also comment on the consistency of the proposed action with the purposes of CBRA as stated in Section 2(b): "... to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts."

The requirements of Sections 305 and 306 of the Disaster Relief Act make prior consultation impractical in responding to a national disaster. However, the Service will participate in Regional Task Forces for disaster and emergencies. Permanent replacement activities related to Section 6(a)(1)-(5) will require consultation prior to commitment of funds.

Several Federal agencies have requested clarification of certain exceptions or have rendered an opinion as to their interpretation. Bilateral discussions between each affected agency and the Fish and Wildlife Service should be initiated to clarify these concerns and to establish procedures for the conduct of consultations. The Service's consultation officer is Mr. Frank McGilvrey, (202) 343-2618. Each agency that anticipates proposing expenditures

or financial assistance within the System under the Section 6 exceptions should have its consultation officer contact Mr. McGilvrey at its earliest convenience to establish consultation procedures.

Dated: September 29, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

Appendix 1—Pertinent Regional Offices

U.S. Fish and Wildlife Service, Post Office Box 1306, Albuquerque, New Mexico 87103: Assistant Regional Director—Habitat Resources; Telephone: 505-766-2324, FTS: 8-474-2324, CBRA Jurisdiction—Texas.

U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring St. S.W., Atlanta, Georgia 30303: Assistant Regional Director—Habitat Resources; Telephone: 404-221-6343, FTS: 8-242-6343; CBRA Jurisdiction—Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina.

U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158: Assistant Regional Director—Habitat Resources; Telephone: 617-965-5100 ext. 9217, FTS: 8-829-9217; CBRA Jurisdiction—Virginia, Delaware, New York, Connecticut, Rhode Island, Massachusetts, Maine.

[FR Doc. 83-27282 Filed 10-5-83; 8:45 am]

BILLING CODE 4310-55-M

similar basis, the health plan and contract health care provider must comply with all of the following four standards—

(A) The term of the agreement between the health plan and the contract health care provider must be for not less than one year;

(B) The agreement between the health plan and the contract health care provider must specify in advance the covered items and services to be furnished to enrollees, and the methodology for computing the payment to the contract health care provider;

(C) The health plan must fully and accurately report, on the applicable cost report or other claim form filed with the Department or the State health care program, the amount it has paid the contract health care provider under the agreement for the covered items and services furnished to enrollees; and

(D) The contract health care provider must not claim payment in any form from the Department or the State health care program for items or services furnished in accordance with the agreement except as approved by HCFA or the State health care program, or otherwise shift the burden of such an agreement onto Medicare, a State health care program, other payors, or individuals.

(iii) If the health plan is not described in paragraphs (m)(1)(i) or (m)(1)(ii) of this section, both the health plan and contract health care provider must comply with all of the following six standards—

(A) The term of the agreement between the health plan and the contract health care provider must be for not less than one year;

(B) The agreement between the health plan and the contract health care provider must specify in advance the covered items and services to be furnished to enrollees, which party is to file claims or requests for payment with Medicare or the State health care program for such items and services, and the schedule of fees the contract health care provider will charge for furnishing such items and services to enrollees;

(C) The fee schedule contained in the agreement between the health plan and the contract health care provider must remain in effect throughout the term of the agreement, unless a fee increase results directly from a payment update authorized by Medicare or the State health care program;

(D) The party submitting claims or requests for payment from Medicare or the State health care program for items and services furnished in accordance with the agreement must not claim or

request payment for amounts in excess of the fee schedule;

(E) The contract health care provider and the health plan must fully and accurately report on any cost report filed with Medicare or a State health care program the fee schedule amounts charged in accordance with the agreement; and

(F) The party to the agreement, which does not have the responsibility under the agreement for filing claims or requests for payment, must not claim or request payment in any form from the Department of the State health care program for items or services furnished in accordance with the agreement, or otherwise shift the burden of such an agreement onto Medicare, a state health care program, other payors, or individuals.

(2) For purposes of this paragraph, the terms *contract health care provider*, *enrollee*, and *health plan* have the same meaning as in paragraph (l)(2) of this section.

Dated: August 12, 1992.

Bryan B. Mitchell,
Principal Deputy Inspector General.

Approved: October 6, 1992.

Louis W. Sullivan,
Secretary.

[FR Doc. 92-26802 Filed 11-4-92; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

43 CFR Subtitle A

Coastal Barrier Improvement Act: Advisory Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Rule-related notice and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is revising its rule-related document of October 6, 1983 to reflect changes in the Coastal Barrier Resources Act (CBRA), as amended by the Coastal Barrier Improvement Act of 1990 (CBIA). This document sets forth the Service's general statement of policy and advisory guidelines regarding the provisions of the CBIA that address limitations on Federal expenditures and financial assistance, and exceptions to the limitations.

DATES: Comments on this document will be accepted through January 4, 1993. The prohibitions on new Federal financial expenditures and assistance, including Federal flood insurance, were effective

within new and expanded units of the Coastal Barrier Resources System upon enactment of CBIA on November 16, 1990. The ban on Federal flood insurance on "otherwise protected areas", as defined in the CBIA, went into effect on November 16, 1991.

ADDRESSES: Comments should be directed to U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Washington, DC 20240 (703-358-2201).

FOR FURTHER INFORMATION CONTACT: Linda Kelsey (703-358-2201).

SUPPLEMENTARY INFORMATION: On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act (CBIA) into law (Pub. L. 101-591). The CBIA amends the Coastal Barrier Resources Act (CBRA) in several significant ways. It expanded the Coastal Barrier Resources System (System) from 183 to 560 units and from 143,000 acres to 1.25 million acres. The System now includes units in Puerto Rico, the U.S. Virgin Islands, Great Lakes States, New Jersey, Maryland, and the Florida Keys, as well as many new areas in States that already contained units within the System. The CBIA also established a new category identified as "otherwise protected areas" where Federal flood insurance for new construction not in conformance with the purposes of the area is banned. The Federal Emergency Management Agency is issuing revised Flood Insurance Rate Maps that reflect the changes. Separate codes are used on the maps depicting areas where the ban went into effect on October 18, 1983, November 16, 1990, and November 16, 1991.

These guidelines reiterate the guidance provided in 1983 on the definition of expenditures and financial assistance. Unless specified that the guidance has been modified by the CBIA, the requirements of CBRA remain unchanged since passage of the Act in 1982. The guidelines for consultation with the Fish and Wildlife Service (Service) are also outlined.

1. Environmental Effects

These guidelines describe the procedures Federal agencies should follow in consulting with the Service prior to making an expenditure on or providing assistance to activities excepted under section 6 of CBRA, as amended by CBIA. Such activities generally continue the status quo, provide localized environmental benefits or localized emergency disaster assistance. Therefore, the Department of the Interior (Department) has

determined that these guidelines will have no significant impact on the environment.

2. Statement of Effects

The Department has determined that these interpretive guidelines are not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. These guidelines will result in minimal cost to Federal agencies and some economic effects on local firms and businesses to the extent that they are engaged in activities covered by the expansion of the System and paid for, or assisted by Federal funds. The guidelines do not require preparation of a federalism assessment under Executive Order 12612. Further, these guidelines do not have any taking implications that would require preparation of an assessment under Executive Order 12630.

3. Paperwork Reduction Act

These interpretive guidelines do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

4. Authorship Statement

This document has been prepared by Frank McGilvrey of the U.S. Fish and Wildlife Service.

5. Public Participation

Interested persons, organizations, Federal agencies and other entities are encouraged to submit comments on these guidelines. Comments will be accepted until January 4, 1993.

Coastal Barrier Resources System—Prohibition on New Federal Expenditures and Procedures for Consultation

I. Financial Assistance

CBRA, as amended by CBIA, with certain exceptions, prohibits Federal expenditures and financial assistance for development within the System. Section 3(3) of CBRA defines "financial assistance" as any form of loan, grant, guaranty, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance.

Section 5(a) provides the general prohibition on new Federal expenditures and financial assistance in System units. Section 5(a) states that except as provided in Section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier

Resources System. CBRA, as amended by CBIA, excepted certain specific activities from this prohibition. They will be discussed under the Exceptions section. "Otherwise protected areas" identified on maps of the System, dated October 24, 1990, are not affected by these prohibitions. They are only affected by the Federal flood insurance program.

The Service has identified additional specific examples of Federal program expenditures and financial assistance prohibited within the System. These activities include, but may not be limited to, the following programs:

Department of Agriculture

Farmers Home Administration

—Loans for rural disaster relief, water systems, wastewater systems, commercial development, community services, and subdivision development.

Rural Electrification Administration

—Loans for new or expanded electrical systems that would encourage development.

Department of Commerce

Economic Development Administration

—Grants for planning and administering local economic development programs.

National Oceanic and Atmospheric Administration

—CEIP grants (Coastal Energy Improvement Program).

Department of Defense

U.S. Army Corps of Engineers

—Construction and financial assistance involving beach erosion control, hurricane protection, and flood control works. Under CBRA, new or expanded navigation projects were prohibited. However, section 6(b) of CBIA allows expansion if the project was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

Department of Energy

—Energy development programs.

Department of Housing and Urban Development

—Block grants for community development.
—Mortgage insurance, housing assistance or rehabilitation subsidy programs.
—Urban Development Action Grants.

Department of Transportation

Federal Aviation Administration

—Grants for airport planning and development.

Federal Highway Administration

—Federal assistance to States for highway construction. CBIA specified two exceptions; U.S. route 1 in the Florida Keys and highways in a System unit in Michigan in existence on the date of the enactment of the CBIA.

Urban Mass Transportation Administration

—Capital improvement and operating grants.

Environmental Protection Agency

—Grants for wastewater treatment construction (Sec. 201 grants), water quality management planning (Sec. 208 grants).

Federal Emergency Management Agency

—Federal National Insurance Program.
—Disaster assistance program.

Federal Home Loan Administration

—Guaranteed housing loans.

General Services Administration

—Construction or reconstruction of Federal property.
—Exchange or sale of Federal property for development purposes.

Small Business Administration

—Loans to small businesses for disaster relief, upgrading of water treatment systems, and other purposes.
—Disaster assistance to homeowners.

Veterans Administration

—Guaranteed housing loans.

This list may not be all inclusive. Each Federal agency is responsible for review of its programs to assure compliance.

II. Exceptions

Section 6 of CBRA, as amended by CBIA, outlines the specific exceptions to the general prohibition on new Federal expenditures or financial assistance. There are two categories of exceptions; expenditures allowed if they meet the requirements of the specific exception, and expenditures allowed if they meet the requirements of the specific exception and also meet the purposes of CBRA. Most of the exceptions remain the same as under CBRA as originally enacted. The few changes are noted in the detailed discussion.

Section 6(a) requires the appropriate Federal official to consult with the

Secretary of the Interior before making any Federal expenditures or financial assistance available under the provisions of Section 6. The Secretary's consultation responsibilities have been delegated to the Service. Procedures for consultation follow the discussion of exceptions.

Expenditures Allowed for Specific Activities

(1) Energy projects (Section 6(a)(1)). Federal assistance may be made available for energy projects in or adjacent to coastal areas for any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body. The legislative history (House Report 97-841) states that "this provision is intended to be read broadly in terms of energy projects. However, the provision should not be interpreted to allow assistance for projects primarily designed to encourage development which might be carried out in the guise of energy development."

(2) Navigation channel improvements (Section 6(a)(2)), as amended by CBIA section 6(b)). The CBRA exception that allowed only maintenance of existing navigation channels was amended to allow maintenance or construction of improvements of existing Federal navigation channels and related structures (such as jetties). CBRA section 6(b) provides that for purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or part of the System unit was included within the System. The use of disposal sites for dredge materials is included under this exception, so long as the sites are related to, and necessary for, the maintenance or construction of an existing project. House Report 97-841 also stated "that because of the unstable nature of barrier islands, existing channels can be relocated periodically."

(3) Roads, Structures or Facilities (Section 6(a)(3)) as amended by the CBIA in this subsection and section 6(c). Maintenance, replacement, reconstruction, or repair, but not expansion (except for U.S. Highway 1 in the Florida Keys and highways in Michigan that run through System units),

of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system can continue. The legislative history indicates the Congressional intent to include drains, gutters, curbs and other related roadworks under this exception. The Service interprets "structures or facilities" to include public utilities. Section 6(a)(6)(F) is also applicable to public utilities that are not essential links in a larger system.

(4) Military activities (Section 6(a)(4)). Military activities essential to national security are excepted from the ban on Federal expenditures, but not from the requirement to consult. The Defense Department will be the judge of what is essential to national security, but, as stated in Conference Report 97-928, its "determination as to whether military activities are essential to national security must be made in accordance with existing law and procedures." The Defense Department still has the responsibility to consult with the Service with respect to any expenditures or financial assistance within the System.

(5) Coast Guard (Section 6(a)(5)). Expenditure of funds or provision of financial assistance for the construction, maintenance, operation and rehabilitation of Coast Guard facilities can continue.

Expenditures Allowed for Specific Activities if They Meet the Purposes of CBRA

(6) Conservation, navigation aids, recreation, scientific research, disaster relief, roads, shoreline stabilization (Section 6(a)(6)). The following actions or projects are excepted, providing the expenditure is consistent with the purposes of CBRA, which are detailed in Section 2(b) (i.e., to minimize loss of human life, wasteful Federal expenditures and damage to fish, wildlife, and other natural resources):

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects. The legislative history states: "This exception recognizes the value of System units as fish and wildlife habitats and is in complete conformity with the purposes of the legislation. It is

intended that the full range of Federal financial assistance authorized for protecting and managing fish and wildlife habitats will continue to be available. This includes, where necessary, assistance for stabilization projects to protect valuable habitats. Federal funds for projects involving facilities for fish and wildlife-related recreation would also be allowed. It is intended by the Committee that any development of recreational facilities be consistent with the purposes of the legislation." (House Report 97-841.)

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto. The legislative history indicates that, in almost every instance, placement and use of such aids and devices on undeveloped coastal barriers would be appropriate. (House Report 97-841.)

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.). The legislative history applied to Section 6(a)(6)(A) would be generally applicable to this provision as well. Recreational use of System units should be encouraged so long as it is accomplished consistent with the purposes of CBRA.

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion of publicly owned or publicly operated roads, structures, or facilities. This exception is essentially moot since the Federal Highway Administration has determined that all highways on the Federal network are essential links in a larger network or system.

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

history cites the planting of dune grass or other beach nourishment activities as examples of these projects.

III. Consultation

Federal agencies must consult with the Service and allow the Service an opportunity to provide written comment prior to making Federal expenditures or financial assistance available for an action excepted under Section 6 of CBRA, as amended by CBIA, within a System unit. Compliance with Section 6 rests initially on the Federal officer responsible for making the funds or financial assistance available for a permitted action. The Service's responsibility is to respond to a consultation request by providing technical information and comments on the question of consistency with CBRA, as amended by CBIA. The final determination whether action permitted under this section is consistent with the purposes of the CBRA rests with the consulting agency.

Consultation Process

Consultation requests should be made through the appropriate Regional Director of the Fish and Wildlife Service (Regional Office addresses are appended).

CBRA, as amended by CBIA, provides for two levels of exception. Section 6(a)(1-5) clearly allows certain designated Federal activities. When consulting on these activities, the Service will provide technical information and register an opinion as to whether the activity is one which the clause allows.

Section 6(a)(6) provides an additional caveat for the included list of exceptions that require that the action is consistent with the purposes of the Act. For activities falling under this subsection, the Service will also comment on the consistency of the proposed action with the purposes of CBRA as stated in Section 2(b) to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources associated with coastal barriers.

The requirements of sections 402, 403, and 502 of the Disaster Relief Act make prior consultation impractical in responding to a national disaster. However, the Service will participate in Regional Task Forces for disasters and emergencies. Permanent replacement activities related to section 6(a)(1-5) will require consultation prior to commitment of funds.

Section 4(d) of the CBIA requires the Administrator of General Services to consult with the Service and obtain a determination as to whether a property proposed for disposal under the Federal

Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) constitutes an undeveloped coastal barrier. The Service will make a determination within 180 days. If it concludes that the property meets the definition of an undeveloped coastal barrier, the property will be added to the System subsequent to notification in the Federal Register.

Section 10 of the CBIA allows the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) to consult with the Service to determine if property under their control is within the System or is undeveloped, greater than 50 acres in size, and adjacent to or contiguous with any lands managed by a governmental agency primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes. RTC and FDIC must allow 90 days for any governmental agency or qualified conservation organization to submit written notice of interest in acquiring such property before placing the property on the open market.

The Service's Washington and Regional Offices will assist RTC and FDIC to the maximum extent possible in identification of such properties, particularly those in the System.

Appendix 1—Pertinent Regional Offices

- U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87102: Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 505-766-2324, CBRA Jurisdiction—Texas.
- U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111: Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 612-725-3510, CBRA Jurisdiction—Minnesota, Wisconsin, Michigan, Ohio.
- U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303: Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 404-331-6343, CBRA Jurisdiction—Louisiana, Mississippi, Alabama, Florida, U.S. Virgin Islands, Puerto Rico, Georgia, South Carolina, North Carolina.
- U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158: Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 617-965-9217, CBRA Jurisdiction—Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Maine.

Dated: August 31, 1992.

Richard N. Smith,
Deputy Director.

[FR Doc. 92-26870 Filed 11-4-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 255

[FRA Economic Docket No. 3, Notice No. 4]

RIN 2130-AA79

Assistance to States and Persons in the Northeast and Midwest Region for Local Rail Services Under Section 402 of the Regional Rail Reorganization Act of 1973

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration ("FRA") is amending its regulations to delete certain provisions that apply to financial assistance for continuing local rail freight services and acquisition or modernization of facilities. These regulations are superfluous to FRA's present statutory responsibilities. Elimination of these regulations will not have an effect on any present program or statutory obligation of FRA or the Department of Transportation ("DOT").

DATES: The final rule will become effective on December 7, 1992.

FOR FURTHER INFORMATION CONTACT: G. Joseph King, Legal Services Branch, Office of the Chief Counsel, FRA, Washington, DC 20590 (Telephone: 202 366-9416).

SUPPLEMENTARY INFORMATION: The regulations contained in part 255 established procedures for implementing the authority conferred by, and for processing applications made pursuant to, section 402 of the Regional Rail Reorganization Act of 1973 (the "3-R Act"), 45 U.S.C. 701 et seq., Public Law 93-236. Section 402 had authorized the Secretary to provide certain "Rail Service Continuation Subsidies." The regulations set forth in part 255 established a process by which a State or a person (including a local or regional transportation authority) in the northeast or midwest region could apply for the financial assistance authorized by section 402. However, section 403(a)(1) or the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, repealed title IV of the 3-R Act, including section 402. Since the statutory authority conferred by section 402, which part 255 was promulgated to implement, has been repealed, the regulations contained in part 255 are no longer necessary.

Public Participation

In taking this action, FRA is not exercising its regulatory authority in a manner that could be informed by public comment. There are no substantive



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/BSP

Memorandum

001 2 1991

To: Regional Directors, Regions 1, 2, 3, 4, and 5

From: ~~Assistant~~ Director

Subject: Guidance for Coastal Barrier Resources Act Consultation with
Federal Agencies

All the Regions have responded to the request for comments on the draft guidance for consultation as required by the Coastal Barrier Resources Act of 1982 and as amended by the Coastal Barrier Improvement Act of 1990. These comments have been carefully reviewed, incorporated into the guidance, and are summarized as follows.

Regions 1 and 2 - Had no comments.

Region 3 - Requested that we basically use the same format as was used in the Ecological Services Manual.

Response - Since the Manual is no longer in use, we decided to use a more streamlined format for this guidance. All of the information in the original guidance, except a definitions section, is in the new guidance. We agree a definitions section is needed and it has been added. Additional clarification on the Service role is included in the second paragraph.

Requested we update the Departmental manual and Director's Order 10 to add Regions 1 and 3.

Response - This will be done for Region 3 immediately and as soon as final action is taken adding the West Coast, Region 1 will be added.

Region 4 - Requests policy guidance on Section 4(d), disposal of surplus property, and Section 10, Resolution Trust Corporation and Federal Deposit Insurance Corporation requirements.

Response - We have initiated dialogue with the General Services Administration about the requirement that they consult with the Service prior to disposal of surplus property on undeveloped coastal barriers. We anticipate that they will provide us with such information and we will request an opinion from the appropriate Region before a final

determination is reached. Region 9 should be informed of any information on possible surplus property proposals that come to the Regions' attention. Follys Island, South Carolina, Coast Guard Station is apparently slated for surplus. We will keep Region 4 informed. Unlike other Federal agencies, RTC and FDIC are not required to consult with us regarding their properties. However, they are required to provide public notice of properties meeting the requirements of Section 10 of the CBIA. A copy of FDIC guidance is attached. With distribution of the revised maps completed, both agencies have been requested to contact the Regions when determining whether they have properties impacted by the CBIA. We will provide the Regions with Federal Register notices on available properties as they become available. The Regions should notify Realty, States, local governments and private conservation organizations of the availability of these properties.

Region 4 expressed concern about the waterward boundary of the units.

Response - USGS determined that these boundaries should be left open because an exact configuration of the sand-sharing system is difficult to determine. The intent is to include the sand-sharing system as a part of the unit. Generally speaking, the boundary will run out to the 30 foot depth on primary barriers and 20 feet on secondary barriers. However, common sense should prevail.

The Region expressed concern about work load requirements.

Response - We are aware of this problem and hope for some relief in the 92 budget.

Region 5 - Concern was expressed over the use of abbreviated language in the listing of exceptions.

Response - We agree this could be a problem, and have revised the guidance to list them as provided in the CBIA.

Concern was expressed about how to evaluate the requirement to "minimize loss of human life".

Response - There has never been a satisfactory answer to this question and no guidance has been forthcoming from Congress. Probably the best answer is try to determine whether the action will unnecessarily expose people to danger from wind and tide.

The question was raised as to the determination of a "recreational project".

Response - This is included in the new definitions section.

Some confusion was expressed over "otherwise protected" areas and the impact of consultations.

Response - This is also included in the new definitions section.

We appreciate the contributions the Regions have made in clarifying the consultation requirements. Please implement this new guidance within 30 days.

RICHARD N. SMITH

Attachment

cc: 3256-MIB-FWS/Directorate Reading Files
3256-MIB-FWS/DD Chron
3012-MIB-CCU
3249-MIB-FWS/AEA Reading Files
3024-MIB-FWS/AFWE Reading Files
434-ARLSQ-FWS/DAFWE Reading Files
400-ARLSQ-FWS/DHC Reading Files
412-ARLSQ-FWS/DHC/BSP Reading Files

FWS/DHC/BSP/FMcGillvrey:bg:09/20/91:(703)358-2201
DISK A FRANK:GUIDE

COASTAL BARRIER RESOURCES ACT CONSULTATION PROCEDURES

These guidelines provide operation-level instructions to implement the consultation requirements of Section 6 of the Coastal Barrier Resources Act of 1982 (CBRA) as amended by the Coastal Barrier Improvement Act of 1990 (CBIA). This activity is presently confined to Regions 2,3,4, and 5 and those field offices therein that have responsibility for units of the Coastal Barrier Resources System (System). If Congress should amend the Act to include parts of the West Coast, Region 1 will automatically have like responsibilities.

The Coastal Barrier Resources Act very clearly bans all Federal expenditures on units of the System except for the few clearly defined exceptions. Federal agencies are required to consult with the Service prior to committing funds for any activity listed under Section 6. There are a few activities listed under other Sections that do not require consultation. Any Federal agency expending funds within a unit of the System that does not meet the requirements of these exceptions is conducting an illegal activity. It is the Service's responsibility to respond to the requests for consultation from Federal agencies in a responsible, timely and lucid manner. However, our response to a consultation request is in the form of an opinion only. The action agency is responsible for obeying the CBRA. The Service has not been granted veto power. All Federal agencies must annually certify to the Secretary of the Interior and to the Congress that they are in compliance with the CBRA.

The Secretary of the Interior has delegated his consultation responsibility to the Service via Part 142 DM 7.1. Under provisions of Section 7 of Director's Order 10, the Director has redelegated authority to certain Regional Directors to issue final consultation comments without additional review and approval at the Central Office level.

Under Section 6, certain activities are permitted after consultation with the Service. These exceptions are divided into two groups. The first group only requires that the proposed funding is in fact a listed exception. The second group requires that the exception also meet the three purposes of the CBRA. Those purposes 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 Units of the System. It is the Service's responsibility to make certain that a proposed funding obligation is included in one of these exceptions.

Exceptions included in the first group include:

- 1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only, on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.
- 2) The maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction.

- 3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.
- 4) Military activities essential to national security.
- 5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto.

Exceptions that are allowed only if they meet all three purposes of the CBRA 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.
- 2) Establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.
- 3) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).
- 4) Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- 5) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.
- 6) Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities. Note - The language is much the same as #3 in the first group except for the term "essential" which is defined under Definitions.
- 7) Nonstructural projects for shoreline stabilization that designed to mimic, enhance, or restore a natural stabilization system.

It is important to note that under the CBIA, Congress has essentially established a two-tier System. Those areas on the maps depicted with dot-lines and with map symbols followed by a "P" are not included under the consultation requirements. The only restriction on these units is a ban on

Federal flood insurance after November 16, 1991. See Definitions for further elaboration.

Responsibilities

Under the Assistant Director for Enhancement, Region 9 will have responsibility for:

- 1) discussions and agreements with other Federal agencies;
- 2) responding to Congressional and Secretarial correspondence;
- 3) developing policy for CBRA activities;
- 4) resolving consultation issues elevated to Washington by the Regions;
- 5) alerting other Federal agencies to apparent violations of CBRA, if not resolved at the Field or Regional level;
- 6) providing staff support for CBRA matters to the Director and the offices of the Assistant Secretary for Fish and Wildlife and Parks, the Under Secretary, and the Secretary;
- 7) reviewing proposed amendments to CBRA; and
- 8) assuring that map changes resulting from CBRA amendments are prepared and distributed.

Regions 2, 3, 4, and 5 have responsibility for:

- 1) final consultation comments;
- 2) reviewing, commenting and coordinating field responses to proposed amendments to CBRA, policy development and other requests;
- 3) disseminating information to concerned Federal agencies and the public as needed;
- 4) alerting Federal agencies to apparent violations of CBRA; and,
- 5) intra-Service consultation.

Relevant Field Offices have the responsibility for investigating and preparing draft consultation responses. In addition, they must:

- 1) maintain and make available to the public for review, up-to-date maps of units in their jurisdiction, including aerial photo atlases if provided by Region 9;
- 2) become familiar with Units in their jurisdiction and potential problems;
- 3) maintain contact with agencies that may be expending Federal funds within System Units;

- 4) be prepared to become involved with FEMA disaster evaluation teams on short notice;
- 5) alert Federal agency counterparts to apparent violations of CBRA; and
- 6) disseminate information to concerned Federal agencies and the public as needed.

The Consultation Process

There are four distinct consultation processes. They are:

- 1) formal consultation;
- 2) disaster relief consultation;
- 3) intra-Service consultation; and
- 4) informal consultation.

1) Formal Consultation: Formal consultation is required when a Federal agency intends to expend funds within a System Unit, as permitted under Section 6. The Federal agency must submit a formal consultation request in writing to the Regional Director. Included must be sufficient information to allow an informed decision. Information should include project purposes and description, including a citation as to the applicable exception. An accurate map related to the System unit is necessary.

Normally the Region will forward the request to the appropriate Field Office to prepare a draft response. A standardized response, such as illustrated in Appendix 1 may be desirable. When appropriate, this process may be included with Fish and Wildlife Coordination Act and Endangered Species Act requirements.

2) Disaster Relief Consultation: When the President declares a National disaster, such as after a hurricane, the Federal Emergency Management Agency (FEMA) will establish a disaster relief office. If CBRA units are impacted, the relevant Field Office will consult with the FEMA office.

The disaster consultation process is divided into two categories:

A) Emergency Relief: Under this category, FEMA authorizes expenditures for such things as debris removal, temporary emergency housing, removal of downed power lines, erection of signs and barricades, etc. These activities must be accomplished immediately, but they must not have permanent impacts on the environment. In this situation, consultation will have to occur after the fact. FEMA will inform the Service of its activities under this category. Although these activities will already have been accomplished, the Service still has the responsibility for providing an opinion, with the objective of modifying procedures on future activities, if needed.

B) Permanent Restoration: FEMA will fund up to 75% of costs for approved repair or restoration of publicly owned and certain non-profit organizations' facilities. Federal property is not eligible for such repair or restoration. The Federal Highway Administration administers its own

disaster relief program for roads on the Federal network, which will require a separate consultation process. FEMA will prepare Damage Survey Reports based on requests for assistance for permanent restoration. Prior to granting funds for the activity, FEMA will submit a formal consultation request to the Service Regional Office. Because these are emergency situations, FEMA requires a response within ten working days. Therefore, it is essential that the responsible Field Office work closely with the FEMA disaster relief office to identify potential problems before the official consultation request is received.

3) Intra-Service Consultation: Intra-Service (inter-program) consultation is required to insure that the Service, itself, is in compliance with the requirements of CBRA. Consequently, any Service program (e.g., Federal Aid, Realty, Endangered Species, Refuges, etc.) expending Federal funds, either directly or indirectly (e.g. pass-through funds) for land acquisition or new development on units of the System, must consult with Enhancement and be approved by the Regional Director prior to any obligation of funds to insure that the proposed activity complies with CBRA.

Generally, exemptions requested by a Service program under Section 6 of CBRA will relate to management, protection, and enhancement of fish and wildlife resources and their habitats, including land purchases and fish- and-wildlife-related recreational activities (Sec. 6(a)(6)(A)); projects under Land and Water Conservation Act and Coastal Zone Management Act (Sec. 6(A)(6)(B)); scientific research (Sec. 6(a)(6)(D)); and maintenance and repair of public roads and utilities (Sec. 6(a)(6)(F)).

Regional program managers should informally consult with the Regional Coastal Barrier Coordinator concerning any coastal activity to determine if a unit of the System will be impacted. If so, a formal consultation process must be initiated. The Regional Coordinator will render an opinion as to whether the requested exemption is or is not in compliance, always keeping the three purposes of CBRA in mind. The final determination must be concurred with by the Regional Director or designee before expenditures are approved. An Intra-Service Consultation Request Form (Appendix II), that lists the minimum information needs, is attached.

4) Informal Consultation: Informal consultation may be relevant when:

A) an agency, planning for a project in a System Unit requests Service input under other authorities, such as NEPA, without specifically requesting a CBRA consultation in writing;

B) an agency specifically requests Service input for a preliminary opinion, but has not submitted a formal consultation request; and

C) the Service, through normal reviews, becomes aware of an activity being planned by another agency on a System Unit, but that agency has not requested consultation.

If issues or disagreements arise at the field level with regard to informal consultation, the Regional Coastal Barriers Coordinator should be notified immediately so that problems can be discussed with the other agency's

counterparts at the Regional level. Any continued disagreements should be referred to the Washington level for resolution.

Definitions

- A. Coastal Barrier Resources System (CBRS) (System). The sum of the Coastal Barrier units as specified in Section 4 of the Coastal Barrier Resources Act as amended by the Coastal Barrier Improvement Act. This guidance applies only to units in the System.
- B. Coastal Barrier Resources System Unit. The individual unit as depicted on the official maps of the System dated October 24, 1990, or as amended thereafter. Each unit is indicated by a letter or letters for the State in which it is located and a number for the specific unit within that State.
- C. Disaster. As defined by the President in declaring a National Emergency. For the purpose of this guidance, applies only when such declaration impacts one or more units of the System, as in the case of a hurricane.
- D. Essential Link. The difference between Section 6(a)(3) and 6(a)(6)(F) as defined in CBRA. This definition applies to roads within units of the System. The Federal Highway Administration has determined that all roads on the Federal highway net should be deemed essential. However, the Service retains the right to disagree based on our interpretation of CBRA.
- E. Existing Federal Navigation Channels (Sec. 6(b)). This is the major exception change from the original CBRA. Federal channels may be widened or deepened if they were authorized prior to the passage of the CBIA.
- F. Highways not included in the Exceptions. U.S. Highway Route 1 in the Florida Keys and all Federal highways in Michigan are not included in these restrictions.
- G. Non-Structural Projects. Shoreline stabilization projects designed to enhance or restore natural stabilization systems (Section 6(a)(6)(G)). This may include such activities as planting dune grass or other beach nourishment projects consistent with restoring a natural system.
- H. Otherwise Protected Units. Those units on System maps of Atlantic and Gulf Coast states depicted with dot lines and a "P" at the end of the symbol. Congress determined that these areas should not be included as part of the System, but would be ineligible for Federal flood insurance after November 16, 1991. This guidance does not apply to those units.
- I. Recreational Projects. Projects that are compatible with the purposes of the Act, especially in making certain that Unit natural resources are not compromised and that structures are not built

that would endanger lives or cause unnecessary losses to the Federal treasury in the event of wind and wave damage.

- J. System Maps. The maps or units in the System dated October 26, 1990, or as the Act may be amended thereafter. There are no written descriptions of the units in the System. These maps are as much a part of CBRA as the language and cannot be modified without Congressional amendment to the Act.

CBRA SECTION 6 - FEMA - CONSULTATION WORKSHEET

DISASTER NO: _____ LOCATION: _____

APPLICANT: _____

CBRA UNIT: _____ DATE ADOPTED: _____

FUNDING AMOUNT: _____

PROJECT DESCRIPTION:

EXISTING STRUCTURE: Y___ N___ N/A___
DATE: _____ DOCUMENTED: _____
(facilities substantially improved since date of unit adoption are not existing facilities)

EXPANSION BEYOND PREDISASTER DESIGN: Y___ N___ N/A___
FEDERAL HIGHWAY: Y___ N___ UNK___

CBRA SEC. 6 EXCEPTION: _____ EMERGENCY: Y___
EXPLANATION:

MEETS PURPOSE OF CBRA: Y___ N___ N/A___
EXPLANATION:

MODIFICATIONS:

SITE VISIT NEEDED: Y___ N___ DATE CONDUCTED: _____

ENDANGERED SPECIES: Y___ N___ SPECIES: _____

EXPLANATION:

CONSISTENT: Y___ N___ INSUFFICIENT INFORMATION: _____

Appendix I

Form Letter Response to Consultation Request

Dear :

This letter provides consultation in response to your (Date of Letter) letter requesting such consultation under the Coastal Barrier Resources Act (CBRA) for an action affecting (Name and Number of System Unit), of the Coastal Barrier Resources System (System). These comments are made pursuant to Section 6 of the CBRA. CBRA requires that the appropriate Federal officer consult with the Secretary of the Interior before making Federal expenditures or financial assistance available within the System.

Your request is for (Describe the proposed Federal action). The (Name of Unit) is part of the System, located on (Description of barrier). This barrier provides habitat for (Describe fish and wildlife resources, migratory birds and other wildlife; spawning, nursery, nesting, feeding areas for commercially and recreational important species of finfish, shellfish, and other aquatic organisms). This barrier contains (Describe other significant natural resources to the extent possible). A site inspection of the Unit by Service biologists was made on (Inspection date).

Section 6 (Cite appropriate subsection letter and number) provides an exception to Section 5, Limitations on Federal expenditures affecting the System, if the expenditure is for (Describe the exception).

The purposes of CBRA 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. (Describe the relationship of the proposed action to the three purposes of CBRA and whether impacts will be beneficial, neutral or detrimental).

Therefore, it is our conclusion that this proposed action (is)(is not) an exception under Section 6 (Cite appropriate subsection letter and number) of CBRA. (If Section 6(a)(6) applies, state conclusion reached as to whether the proposed action is consistent with the purposes of CBRA).

Sincerely,

Regional Director

Appendix II

Form Memo for Intra-Service Consultation

To: Regional Director

From: (Program Originator)

Subject: Request for Intra-Service Consultation on Exemption for Coastal Barrier Resources Act (CBRA)

1. Name and number of unit of Coastal Barrier Resources System with map.
2. Description of proposed action.
3. Exception (Number)(Letter) applied for under Section 6.
4. Discuss the relationship of the proposed action to the exemption.
5. Conclusion (your opinion).
6. Additional remarks.
7. Recommendations.
8. Concurrence.



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

MAY 18 1984

Memorandum

To: Regional Director (ARD-HR), Region 2, 4 and 5
From: Associate Director - Habitat Resources
Subject: Consultation Procedures for Coastal Barrier Resources Act (CBRA)

The National Wildlife Federation has requested and we have agreed that a copy of each formal CBRA consultation request and response will be furnished to them. The Regional Office should provide copies of all formal consultation requests and responses to Frank McGilvrey, Coastal Barriers Coordinator, via faxform, as soon as available so that he may provide them to NWF. In addition, NWF will name a lead conservation organization in each Region to receive this same information directly from you. We will provide names as soon as they are received.

MAY 29 1984

MEMORANDUM

TO : Field Supervisor, FWS, Brunswick, Georgia
Field Supervisor, FWS, Charleston, South Carolina
Field Supervisor, FWS, Daphne, Alabama
Field Supervisor, FWS, Lafayette, Louisiana
Field Supervisor, FWS, Panama City, Florida
Field Supervisor, FWS, Raleigh, North Carolina
Field Supervisor, FWS, Vero Beach, Florida

FROM : Assistant Regional Director—Habitat Resources, FWS,
Atlanta, Georgia

SUBJECT: Consultation Procedures for Coastal Barrier Resources Act

We have been notified by the Washington Office to provide copies of all formal consultation requests and responses to Frank Hollivay, Coastal Barriers Coordinator, via faxform, so FWS may provide them to the National Wildlife Federation (see attached memorandum). Therefore, please transmit accordingly all formal requests for consultation under CBSA that are received directly by your office. The Regional Office will provide copies of final responses and all requests received here initially.

W Warren T. Olds, Jr.

Attachment

HAYNES:jb:5/24/84

navigation, recreation, scientific research, disaster relief, roads, or shoreline stabilization.

To fulfill the requirements of the Coastal Barrier Resources Act, we recommend that NOAA request consultation with the Service. Any such request should be addressed to the Assistant Regional Director - Ecological Services, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, Room 1276, 75 Spring Street, S.W., Atlanta, Georgia 30303. ~~To facilitate the consultation process, we recommend that your request include the following information:~~

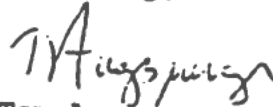
1. Name and number of unit of Coastal Barrier Resources System: refer to Coastal Barrier Resources System maps.
2. Description of barrier (attach map with landmarks): what is the location (longitudinal and latitudinal coordinates, if appropriate) of the barrier to the adjacent coastline or mainland?
3. Description of fish and wildlife resources and other resource features of scenic, scientific, recreational, historic, archeological, and economic importance on the barrier.
4. Description of the proposed action; a brief summary of what the proposal is to accomplish and dates for initiation and completion of the action.
5. Exception (number) and (letter) applied for under Section 6 of CBRA: refer to Section 6 exceptions in Coastal Barrier Resources Act.
6. Discuss the relationship of the proposed action to the exception.
7. Conclusion;
 - Clearly state NOAA's opinion regarding whether the proposed action under Section 6 (letter and number) is or is not an exception to CBRA.
 - For exemptions under Subsection 6(a)(6) A through G, in addition to the above conclusion, a statement is necessary that in your opinion the proposed action is consistent with the purposes of the Act.
8. Additional remarks: describe any additional background information that would assist in processing this consultation request.

Finally, the Service is investigating whether there was an apparent violation of the CBRA when Federal assistance through NOAA was provided for construction of Phase I of the regional ocean and

estuarine access facility on Topsail Island, which also occurs in the designated unit, LO6, of the CBRS. It appears that NOAA may have failed to consult with the Service as required under the CBRA.

The Service looks forward to beginning formal consultation procedures on the current project and in resolving this matter. Please provide this office a copy of any request submitted to our Regional Office in Atlanta for consultation under the CBRA for the Phase II project on Topsoil Island as well as any other correspondence on this matter concerning Phase I. If you have any questions, please contact Patty Valentine Darby, our office's CBRA Coordinator.

Sincerely,



Tom Augspurger
Acting Supervisor

UNITED STATES GOVERNMENT
memorandum

DATE: March 9, 1993

REPLY TO
ATTN OF: Assistant Regional Director, AFF

SUBJECT: Request for Intra-Service Consultation on Exemption for Coastal Barrier Resources Act (CBRA)

TO: Assistant Regional Director, ES

1. Name and Number of Unit of Coastal Barrier Resources System

The proposal project involves Raccoon Island, part of the Isles Dernieres Unit, S06, of the Coastal Barrier Resources System Act (CBRA).

2. Description of the Proposed Action

The Louisiana Department of Wildlife and Fisheries, using funds granted by the U.S. Fish and Wildlife Service under authority of the 1993 Supplemental Appropriations Act for the purpose of alleviating damages from Hurricane Andrew, proposes to gather baseline data, develop and execute a plan to use suction dredging to rebuild a portion of the beach and close breaches across Raccoon Island, an important nesting island for water and shore birds. Optional work to be considered if sufficient funds are available include widening the island and construction of segmented breakwaters on the Gulf side of the island in 4 to 6 feet of water. Habitat conditions and bird utilization of the island will be monitored annually through August of 1996.

3. Exception Applied for Under Section 6

6(a)(6)(A) and (G)

4. Discuss the Relationship of the Proposed Action to the Exception

The proposed action is to repair damage to the island caused by Hurricane Andrew in order to restore habitat for nesting birds. This is clearly within the intent of exception 6(a)(6)(A), which provides for stabilization projects for fish and wildlife habitats, and 6(a)(6)(G), which allows nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems. The proposed action meets the stated purposes of the Act in that restoration of the barrier island will help minimize loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources.

5. Conclusion

It is my opinion that the proposed action is an allowable exception under Section 6 of the CBRA. Furthermore, it is my opinion that the proposed action is consistent with the purposes of the Act.

6. Additional Remarks:

None.

7. Recommendations:

Cleophas Cooke, Jr.
Assistant Regional Director, FFA

3/10/93
Date

Penney Hays
Regional Coastal Barrier Coordinator

3/11/93
Date

8. Concurrence:

Harvey C. Corn
Assistant Regional Director, ES

3/17/93
Date

Attachment

C A I L L O U

B A Y

ADD TO 506

506

G U L F

M E X I C O

Report to Congress on the Coastal Barrier Resources System

UNITED STATES
DEPARTMENT OF THE INTERIOR



Map produced, edited and published
by the Coastal Barriers Study Group
U.S. Department of the Interior
Washington, D.C. 20540

QUADRANGLE WESTERN ISLES DERNIERES LOUISIANA



- Solid line depicts recommendations for additions to or deletions from the Coastal Barrier Resources System. (Section 10 of P.L. 97-351)
- Dashed line depicts approximate boundaries of existing units in the Coastal Barrier Resources System, for reference purposes only
- Dotted line depicts approximate boundaries of an undeveloped barrier that is "otherwise protected" or a utility or other quiet property

Base Map is the 1:50,000 Geological Survey 1:25,000 scale quadrangle

November 16, 1992

Mr. Robert F. McGhee
Associate Division Director
Water Management Division
Environmental Protection Agency
345 Courtland St, NE.
Atlanta, Georgia 30365

Dear Mr. McGhee:

This is in response to your letter, which we received on October 26, 1992 (letter undated), requesting consultation under the Coastal Barrier Resources Act (CBRA), for an action affecting the Cockroach Bay Unit (Unit number FL-83) of the Coastal Barrier Resources System (System), Hillsborough County, Florida. These comments are made pursuant to Section 6 of the CBRA. The CBRA requires that the appropriate Federal Officer consult with the Secretary of the Interior before making Federal expenditures or financial assistance available within the System.

Your request is for a Section 6 exception to the restrictions on funding construction activities in coastal units identified in the CBRA. The purpose of the proposed action to be funded would be the restoration and enhancement of important fish and wildlife habitats in the Cockroach Bay Unit. The Cockroach Bay Unit is located on the eastern shore of Tampa Bay, almost due east of St. Petersburg Beach. The project site contains three large borrow pits. The pits differ widely in salinity ranges with the lowest ranging from 1-3 ppt and the highest ranging from 25-30 ppt. The overall objective of the project is, in part, to restore and enhance the estuarine system associated with Cockroach Bay by modifying and connecting the pits in such a manner as to restore the appearance and function of a natural system. The project will result in the improvement or restoration of tidal creek, shoreline mangrove, shallow emergent estuarine (shoreline marsh), and shallow submerged estuarine (seagrass) habitats. These habitat types are all extremely valuable to a variety of important fish and wildlife species of the area.

The purposes of the CBRA 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.

Section 6(a)(6) of the CBRA provides an exception to Section 5, (limitations on Federal expenditures affecting the System), if the expenditure is for ". . . study, management, protection and enhancement of fish and wildlife resources and habitats"

The proposed project will considerably benefit fish and wildlife in Cockroach Bay through restoration and enhancement of important habitats. Therefore, it is our conclusion that this proposed action is an exception under Section 6(a)(6)(D) of the CBRA.

Sincerely yours,



Warren T. Olds, Jr.
Assistant Regional Director

cc:
Field Supervisor, FWS, Vero Beach, FL

RHaynes:jefc:11/12/92
c:\...\ronnie\mcghee.ltr



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

Tom Olds, Assistant Regional Director
US Fish and Wildlife Service
Richard B. Russell Federal Building
75 Spring Street SW, Room 1276
Atlanta, Georgia 30303

Dear Mr. Olds:

This letter is to request consultation with your agency in accordance with the requirements of the Coastal Barrier Resources Act of 1982 as amended by the Coastal Barrier Improvement Act of 1990 (CBRIA). The request is in furtherance of the Cockroach Bay restoration project supporting the "Coastal America" initiative. The Coastal America Program is a Presidential initiative begun in February 1991 to improve the Federal response to significant coastal problems through joint governmental action. This new initiative sets forth an innovative approach to work with other Federal programs and integrate Federal actions with state, local, and non-governmental efforts. This partnership will ensure that stewardship of coastal living resources is coordinated, efficient, and successful. Projects can range from implementing actions which protect environmental resources, restore degraded resources or undertake pilot remedial actions in highly contaminated areas. Technical focus is to be in at least one of three areas:

Habitat loss and degradation
Nonpoint source pollution
Contaminated sediments

Dr. Ronnie Haynes has been in recent communication with my staff and has advised us of the need to request consultation with your office and to provide the following information:

NAME AND NUMBER OF UNIT: Cockroach Bay FL-83

DESCRIPTION OF BARRIER: Map (enclosed)

DESCRIPTION OF RESOURCES: The upland reaches of Cockroach Bay are diverse in species composition especially avifauna. Brown pelicans, cormorants, various seagulls, white ibis, woodstorks, roseate spoonbills, redwing blackbirds, grackles, great blue herons, and white egrets are commonly seen in the area surrounding Cockroach Bay. There are three borrow pits within the project site. These three pits, based on their proximity to the Bay itself, range in salinity from a low 1-3ppt salinity (S.E. pond), an intermediate 5-7ppt (N.E. pond), and a high of 25-30ppt. As a result, fish species are diverse. It is reported that in the

least saline southeast pit, largemouth bass and perch can be found. In the most saline, pit snook, mullet and blue crab have been sighted. Alligator, raccoon, and opossum are common. A list of additional known species is also enclosed.

Current use of this area is restricted to the public. Public access will resume as the project develops. There are no known archeological, historic, or cultural resource sites within the project area.

DESCRIPTION OF THE PROPOSED ACTION: The overall objective of this multi-phased project is to create, restore, and enhance the estuarine system associated with Cockroach Bay. Phase One proposes to construct a mosaic of habitats in the northern reaches of the Cockroach Bay Tract, concentrating on creating a series of interconnected open water basins of decreasing salinities (i.e., the westernmost basin being the most saline, getting progressively fresher moving toward the northeastern basin and then to the southeastern basin). In addition, stormwater will be pretreated by constructed biological treatment ponds prior to entering the created wetlands. Phase One should greatly enhance existing fisheries function for Tampa Bay, functions which have been significantly impacted due to widespread losses throughout the Bay. An additional objective of this particular project is to enhance relationships between Federal agencies as well as eliminate duplication of effort between agencies charged with natural resource management.

EXCEPTION NUMBER AND LETTER APPLIED FOR UNDER SECTION 6 OF CBRA:

It is felt that this project qualifies for the conservation and scientific research exception specified under §6(a)(D) of the CBRA. It is the opinion of the U.S. Environmental Protection Agency, Region IV, that the habitat restoration that will take place at Cockroach Bay is consistent with the purposes of the CBRA.

ADDITIONAL INFORMATION: The Cockroach Bay project will provide rehabilitation and restoration of mesohaline and oligohaline marsh habitats for Tampa Bay. More than 4,300 acres of these critical wildlife habitats have been lost in the Tampa Bay watershed. This project will recreate in excess of 200 acres of these habitats, along with 300 acres of associated uplands and open water habitat. It is anticipated that wildlife species from Tampa Bay and its watershed will use these restored resources. In addition, water quality benefits will be realized from the pretreatment of stormwater in the constructed treatment ponds.



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

March 19, 1993

Planning Division
Environmental Branch

Assistant Regional Director
Habitat Resources
U.S. Fish and Wildlife Service
Richard B. Russell Federal Building
75 Spring Street Southwest
Atlanta, Georgia 30303

Dear Sir:

This is in reference to the proposed maintenance dredging of Cuts V23 to V27 of the Intracoastal Waterway (IWW), J to M, 12-foot Federal Navigation project in the vicinity of Ponce de Leon Inlet, Volusia County. This dredging area is currently scheduled for advertisement March 1993 and construction is scheduled to begin August 1993. Approximately 125,000 cubic yards of beach quality sand from shoals in the IWW will be removed by hydraulic pipeline dredge and placed on the Lighthouse Point Park beach just south of the north jetty (enclosure 1) at Ponce de Leon Inlet.

This request is in regard to consultation requirements under Section 6 of the Coastal Barrier Resources Act (CBRA). The purpose of CBRA is to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers by restricting future Federal expenditures and financial assistance which have the effect of encouraging development of these coastal barriers. The U.S. Army Corps of Engineers was asked by the City of Ponce de Leon to place dredged material from the Intracoastal Waterway on this spit, as it is severely eroded and required immediate protection. Florida Department of Natural Resources agrees that placement of material on this spit is acceptable.

A review of the units comprising the Coastal Barrier Resources System in the vicinity of the proposed project area identifies the Ponce Inlet Unit (P-08) as being in the project area. The Ponce Inlet Unit extends about .75 miles north and 1.0 mile south of Ponce de Leon Inlet; the disposal of dredged material on the State Park lands will not violate the provisions of the Coastal Barrier Resources Act. This activity is specifically exempted under Section 6(a)(2) of the Act which specifies that maintenance of Federal navigation channels, including the Intracoastal Waterway, fall under exception to the Act. The dredging area lies within an area proposed for addition to (P-08), (enclosure 2).

We are requesting your concurrence that this project is consistent with the purposes of the Act and falls within the cited exemption.

Your response to this notification is requested. If you have any questions concerning this matter please contact Ms. Tracy Tevington at telephone 904-232-3332.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. J. Salem". The signature is fluid and cursive, with a long horizontal stroke at the end.

A. J. Salem
Chief, Planning Division

Enclosures

Copy Furnished:

Mr. David Wesley, USFWS Jacksonville

April 15, 1993

Mr. A. J. Salem
Chief, Planning Division
U.S. Army Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32232-0019

Dear Mr. Salem:

This responds to your letter of March 19, 1993, requesting our comments on the Corps of Engineers' (Corps) proposed maintenance dredging of the Intracoastal Waterway (IWW) at Ponce de Leon Inlet, Volusia County, Florida, in accordance with the Coastal Barrier Improvement Act (Act). The project calls for maintenance dredging in Cuts V23 to V27 of the IWW, J to M, in the 12-foot Federal Navigation project. Approximately 125,000 cubic yards of material will be removed by hydraulic pipeline dredge, and placed on the Lighthouse Point Park Beach just south of the north jetty at Ponce de Leon Inlet.

This project is located within Ponce de Leon Inlet Resource Unit P08, of the Coastal Barrier Resources System (System). These comments are provided pursuant to Section 6 of the Act. The Act requires that the appropriate Federal officer consult with the Secretary of the Interior before making Federal expenditures or financial assistance available within the System.

Within Unit P08, there is a wide diversity of fishery habitats, including mangrove-fringed shorelines, smooth cordgrass/mangrove intertidal marshes, and tidal creeks. Within this System, it is common to observe the federally endangered West Indian manatee feeding, resting, and cavorting. The open water and intertidal wetlands are used by a variety of wading birds for feeding and roosting. The federally threatened Atlantic salt marsh snake occurs in the smooth cordgrass/mangrove intertidal wetlands. On the Atlantic side of the barrier island, the beaches are used for nesting by the federally threatened loggerhead sea turtle.

Section 6(a)(2) of the Act provides an exception to Section 5, "Limitations on Federal Expenditures Affecting the System," if the expenditure is for "the maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements. . . ."

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. Maintenance dredging and disposal of the material within Unit P08, in the Service's opinion, complies with the purposes of the Act, as stated in Section 2(b). Therefore, it is our conclusion that this proposed action is an exception under Section 6(a)(2) of the Act.

With reference to the Section 7 consultation, in accordance with the Endangered Species Act, the Corps had previously coordinated with the Jacksonville Field Office. On January 4, 1993, the Corps notified the Service that the proposed action would not affect any threatened or endangered species or critical habitat. To protect the manatee, the Corps would include the standard manatee construction conditions in the plans and specifications. The Service responded to the Corps on January 25, 1993 (Service Log No. 4-1-93-127C) and stated that we concurred with the Corps' determination. Based on available loggerhead sea turtle nesting information, it is highly unlikely that turtles nest within the disposal site, and the dredged material will be placed below mean high water.

We appreciate the opportunity to provide our comments.

Sincerely yours,



Warren T. Olds, Sr.
Assistant Regional Director
Ecological Services

cc:

Field Supervisor, FWS, Jacksonville, FL

c:\wp51\work\haynes\letter\salem.doc



U.S. Fish & Wildlife Service

Coastal Barrier Resources Act

Consultation Guidance for Federal Agencies

The Coastal Barrier Resources Act (CBRA) of 1982 and subsequent amendments ([16 U.S.C. 3501 et seq.](#)) established the John H. Chafee Coastal Barrier Resources System (CBRS), a defined set of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The CBRS units are depicted on a set of maps that is maintained by the U.S. Fish and Wildlife Service (Service). With some exceptions, **no new Federal expenditures or financial assistance may be made available for any purpose within the System Units of the CBRS, including: construction or purchase of roads, structures, facilities, or related infrastructure; and most projects to prevent the erosion of, or otherwise stabilize, any inlet, shoreline, or inshore area. Most new Federal flood insurance is also prohibited within the CBRS.**

The purposes of the CBRA 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...” (16 U.S.C 3501(b)). **CBRA does not prohibit the expenditure of private, state, or local funds within the CBRS.** Additionally, CBRA does not prevent Federal agencies from issuing permits or conducting environmental studies.

Types of CBRS Units

The CBRS contains two types of units, “System Units” and “Otherwise Protected Areas” (OPAs). OPAs are denoted with a “P” at the end of the unit number (e.g., FL-64P). While the full suite of restrictions on Federal expenditures applies within System Units, the only Federal spending prohibition within OPAs is on Federal flood insurance. CBRA does not



Marsh restoration at Blackwater National Wildlife Refuge, Maryland.

prohibit any other type of Federal expenditures or financial assistance within OPAs. **Consultation with the Service is not required for proposed actions carried out within an OPA.** However, prior to commitment of disaster relief funds, Federal agencies should disclose to eligible applicants information about an OPA designation and requirements or restrictions related to flood insurance.

CBRA's Exceptions

Federal agencies, after consultation with the Service, may make Federal expenditures and financial assistance available within System Units for activities that meet one of the CBRA's exceptions. Examples of activities that may meet one of the exceptions include:

- The maintenance, replacement, reconstruction, or repair of **publicly owned roads, structures, or facilities**
- **Military activities** essential to national security
- The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities**
- Projects for the study, management, protection, and enhancement of **fish and wildlife resources**
- Acquisitions of **fish and wildlife habitat** (including floodplain buyouts)
- Projects under the **Coastal Zone Management Act** and the **Land and Water Conservation Fund**
- **Recreational projects** (e.g., construction of a bike path or bird watching platform)
- **Scientific research**
- Actions necessary to alleviate an **immediate emergency** in a
- Exploration, extraction, or transportation of certain **energy resources**
- The maintenance or improvement of existing **Federal navigation channels** (including the Intracoastal Waterway) and related structures

Presidentially declared disaster (e.g., debris removal, provision of emergency food and shelter, restoration of utilities)

- **Nonstructural projects for shoreline stabilization** (e.g., planting of dune grass and beach nourishment)

See [Title 16 Section 3505](#) of the U.S. Code for the full text and conditions of the exceptions.

CBRA Consultation Process

Any Federal agency proposing to spend funds within a System Unit of the CBRS must send a written request to the appropriate U.S. Fish and Wildlife Service [Ecological Services Field Office](#) with a description of the project or action, the location of the project or action, the particular CBRA exception(s) that applies to the project or action, an explanation of how the project or action meets that exception(s), and any other supporting materials.

The Service has developed a [flow chart](#) to assist Federal agencies in determining whether a CBRA consultation is necessary, and an [inter-agency CBRA consultation template](#) to help facilitate the consultation process. Federal agencies may submit the template and any additional documentation to the appropriate field office to fulfill CBRA's consultation



Road damage in Chincoteague National Wildlife Refuge, Virginia.

requirement. **Any response from the Service to a CBRA consultation request is in the form of an opinion only.** The Service has not been granted veto power. The responsibility for complying with CBRA and the final decision regarding the expenditure of funds for a particular action or project rests with the Federal funding agency. To locate the appropriate Service field office, visit: <https://www.fws.gov/offices>.

Where to Find CBRS Maps and Data

The Service's website contains CBRS

maps, data, and tools that can help determine whether properties and project sites are located within the CBRS.

Official CBRS maps and statewide locator maps: <https://www.fws.gov/cbra/maps/index.html>

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

CBRS Validation Tool (allows users to produce documentation that indicates whether a specific area is within or outside of the CBRS): <https://www.fws.gov/cbra/documentation.html>

Digital CBRS Data (downloadable shapefile, Web Map Service, and ArcGIS Representational State Transfer Service): <https://www.fws.gov/cbra/maps/boundaries.html>



Freshly planted grass to help with beach erosion at Bon Secour National Wildlife Refuge, Alabama.

**U.S. Fish & Wildlife Service
Ecological Services
5275 Leesburg Pike
Falls Church, VA 22041
703-358-2171
www.fws.gov/cbra**

March 2019

ATTACHMENT IS LOCKED

ings or invalid file format do not permit using 20191028 1225_Email_Fwd_ Please print for PF (email and attachme (7).pdf (14

TEMPLATE FOR INTERAGENCY CBRA CONSULTATIONS

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

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

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

Additional Resources:

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

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

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

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

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

DATE

NAME

TITLE

OFFICE

STREET ADDRESS

CITY, STATE ZIP

The **AGENCY NAME** requests a consultation with the U.S. Fish and Wildlife Service (Service) under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq.*) for the proposed **NAME OF ACTION/PROJECT**.

Project Location

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

The action or project is located in **COUNTY, STATE** within (or partially within) Unit(s) **UNIT NUMBER(S)** of the Coastal Barrier Resources System (CBRS).

Description of the Proposed Action or Project

Provide a brief description of the action or project, including the Federal funding source.

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

Identify the appropriate exception(s) for the action or project under the CBRA (16 U.S.C. 3505(a)).

General Exceptions

- ☐ 16 U.S.C. 3505(a)(1): Any use or facility necessary for the **exploration, extraction, or transportation of energy resources** which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.
- ☐ 16 U.S.C. 3505(a)(2): The **maintenance or construction of improvements of existing Federal navigation channels** (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System Unit was included within the CBRS.
- ☐ 16 U.S.C. 3505(a)(3): The maintenance, replacement, reconstruction, or repair, but not the expansion, of **publicly owned or publicly operated roads, structures, or facilities that are essential links** in a larger network or system.
- ☐ 16 U.S.C. 3505(a)(4): **Military activities** essential to national security.

- ☐ 16 U.S.C. 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto.

Specific Exceptions

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

- ☐ 16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
- ☐ 16 U.S.C. 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto.
- ☐ 16 U.S.C. 3505(a)(6)(C): Projects under the **Land and Water Conservation Fund Act** of 1965 (16 U.S.C. 4601-4 through 11) and the **Coastal Zone Management Act** of 1972 (16 U.S.C. 1451 et seq.).
- ☐ 16 U.S.C. 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- ☐ 16 U.S.C. 3505(a)(6)(E): Assistance for **emergency actions essential to the saving of lives and the protection of property and the public health and safety**, if such actions are performed pursuant to sections 5170a, 5170b, and 5192 of title 42 **and are limited to actions that are necessary to alleviate the emergency.**
- ☐ 16 U.S.C. 3505(a)(6)(F): Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of **publicly owned or publicly operated roads, structures, and facilities.**
- ☐ 16 U.S.C. 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system.

Justification for Exception(s)

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

Contact Information

Include contact information and where the response should be sent.

FUNDING AGENCY SIGNATORY AND TITLE

U.S. Fish and Wildlife Service Response

Below is the Service's response to AGENCY NAME'S request for a consultation under the CBRA for ACTION/PROJECT NAME. This response represents the Service's opinion. **The final decision regarding the expenditure of funds for this action or project rests with the Federal funding agency.** AGENCY NAME has fulfilled its obligation to consult with the Service under the CBRA for this particular action or project within the CBRS. Please note that any new commitment of Federal funds associated with this action or project, or change in the project design and/or scope, is subject to the CBRA's consultation requirement.

The Service has reviewed the information provided by AGENCY NAME, and believes the referenced action/project is:

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

Additional Information/Comments

Include any additional information/comments.

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

SERVICE FIELD OFFICE SIGNATORY AND TITLE

DATE

From: [Budd-Falen, Karen](#)
To: [Margaret Everson](#); [David Bernhardt](#)
Subject: Fwd: draft CBRA memo
Date: Tuesday, October 29, 2019 7:25:31 AM
Attachments: [Draft CBRA memorandum.docx](#)

Attached is the draft legal analysis of the CBRA memo you requested.

Karen

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

From: **Romanik, Peg** <peg.romanik@sol.doi.gov>
Date: Mon, Oct 28, 2019 at 6:29 PM
Subject: draft CBRA memo
To: Karen Budd-Falen <karen.budd-falen@sol.doi.gov>
Cc: Gregory Zerzan <gregory.zerzan@sol.doi.gov>

Karen, attached is the draft CBRA. I made a few changes since you saw it this morning but nothing of substance. I told David and Margaret they would get a draft today (Monday). Could you please forward it to them - assuming you are okay with this draft. I may tinker with a few little matters, very minor, but this draft captures the discussion we had last week. 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

--

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

Discussion

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From: [Mills, Katie](#)
To: [Melissa Beaumont](#)
Subject: Fwd: scanned memo
Date: Wednesday, October 30, 2019 12:58:23 PM
Attachments: [Coastal Barrier Resource memo001.pdf](#)

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

From: Karen Budd-Falen <karen.budd-falen@sol.doi.gov>
Date: Wed, Oct 30, 2019 at 12:26 PM
Subject: Fwd: scanned memo
To: <john_tanner@ios.doi.gov>, George Wallace <rob_wallace@ios.doi.gov>, <russell_newell@ios.doi.gov>, <katie_mills@ios.doi.gov>, <gregg_renkes@ios.doi.gov>, <margaret_e_everson@fws.gov>, <cole_rojewski@ios.doi.gov>

I think I have everyone who wanted a copy of the CBRA legal memo. I understand Cole is taking the lead in responding to inquiries on this subject.

Sent from my iPhone

Begin forwarded message:

From: "Romanik, Peg" <peg.romanik@sol.doi.gov>
Date: October 30, 2019 at 11:44:44 AM EDT
To: Karen Budd-Falen <karen.budd-falen@sol.doi.gov>
Subject: Fwd: scanned memo

Karen, two printers and a scanner wouldn't work so MG had to scan this for me. Here it is! I will email to Margaret and give her hard copy tomorrow when she gets into the office. Do you want me to email to others - happy to do so.
Peg

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior
Office: (202)208-5578
Cell: (202)515-1000

On Wed, Oct 30, 2019 at 11:36 AM Caminiti, Mariagrazia
<marigrace.caminiti@sol.doi.gov> wrote:

attached

--

Marigrace Caminiti

■■■■■

202-802-2114-Cell



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Re: Coastal Barrier Resources Act
Date: October 30, 2019

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to

mimic, enhance, or restore natural stabilization systems,” if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion “interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit].” We understand that local communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and

returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA’s purpose, are “of significant value to society,”² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers (“Corps”), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service’s (nor the action agency’s) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the “long-term conservation of these fish, wildlife, and other natural resources” associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in “threats to human life, health, and property.” *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to “mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G).

¹ CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

² CBRA House Report (September 21, 1982) at 8.

³ CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

⁴ We note that “damage” here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

From: [Beaumont, Melissa](#)
To: [Margaret Everson](#)
Subject: Fwd: scanned memo
Date: Thursday, October 31, 2019 3:38:23 PM
Attachments: [Coastal Barrier Resource memo001.pdf](#)

Bringing this to the top of your inbox! This looks like the latest version.

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

From: **Mills, Katie** <katie_mills@ios.doi.gov>
Date: Wed, Oct 30, 2019 at 12:29 PM
Subject: Fwd: scanned memo
To: Melissa Beaumont <melissa_beaumont@fws.gov>

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

From: **Karen Budd-Falen** <karen.budd-falen@sol.doi.gov>
Date: Wed, Oct 30, 2019 at 12:26 PM
Subject: Fwd: scanned memo
To: <john_tanner@ios.doi.gov>, George Wallace <rob_wallace@ios.doi.gov>, <russell_newell@ios.doi.gov>, <katie_mills@ios.doi.gov>, <gregg_renkes@ios.doi.gov>, <margaret_e_everson@fws.gov>, <cole_rojewski@ios.doi.gov>

I think I have everyone who wanted a copy of the CBRA legal memo. I understand Cole is taking the lead in responding to inquiries on this subject.

Sent from my iPhone

Begin forwarded message:

From: "Romanik, Peg" <peg.romanik@sol.doi.gov>
Date: October 30, 2019 at 11:44:44 AM EDT
To: Karen Budd-Falen <karen.budd-falen@sol.doi.gov>
Subject: Fwd: scanned memo

Karen, two printers and a scanner wouldn't work so MG had to scan this for me. Here it is! I will email to Margaret and give her hard copy tomorrow when she gets into the office. Do you want me to email to others - happy to do so.
Peg

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior
Office: (202)208-5578
Cell: (202)515-1000

attached

—

Marigrace Caminiti

Executive Assistant to the Solicitor
US Department of the Interior
1849 C Street, NW, Rm. 6352
Washington, DC 20240
202-208-4423 - main number
202-208-3111 - direct
202-208-5584 - fax
202-528-0486 or 202-359-2949 -cell/wcell

[illegible]

NOTICE: This electronic mail message (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this Message in error, please notify the sender immediately and destroy all copies.

—

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

— —

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

Office: 202-208-4299

Cell: 202-856-5205

From: [Cole Rojewski](#)
To: [Margaret Everson](#)
Cc: [Melissa Beaumont](#); [Amanda Hall](#)
Subject: CBRA OCL Draft Response
Date: Thursday, October 31, 2019 8:37:38 PM
Attachments: [ATT00001.txt](#)
[CBRA OCL draft response clean 415.docx](#)

Margaret-

I wanted you to see the draft CBRA letter. I expect OCL will roll this out Monday morning. We will keep you updated once it's locked in.

Thanks,
Cole

Sent from my iPad

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your October 25, 2019 letter regarding the Coastal Barrier Resources Act (CBRA). In your letter you asked a simple question:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory provision is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law which provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns you raised in your letter, I asked the Department’s Office of the Solicitor to review the 1994 opinion you referenced and to determine whether Section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor concluded that the exemption in Section 6 is not limited to shoreline stabilization projects occurring within the System.

In 1982, when Congress passed CBRA, which established the John H. Chafee Coastal Barrier Resources System, it found that coastal barriers contain significant cultural and natural resources, including wildlife habitat, and function as natural storm protective buffers. Congress also found that coastal barriers are generally unsuitable for development. To achieve the purposes of the act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers”, CBRA

The 1994 legal memorandum interpreting Section 6 that you referenced in your letter contains no analysis but concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System.

[illegible]

cc: The Honorable David Rouzer
The Honorable Garret Graves

From: [Sellars, Roslyn](#)
To: [Margaret Everson](#); [Bryan Arroyo](#); [Stephen Guertin](#); [Morris, Charisa](#); [Melissa Beaumont](#)
Subject: Scanned CBRA doc
Date: Monday, November 4, 2019 10:16:37 AM
Attachments: [CBRA DOC.pdf](#)

Attached is the CBRA doc as requested by Charisa, The original is on Margaret's chair.

Roslyn



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Re: Coastal Barrier Resources Act
Date: October 30, 2019

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to

mimic, enhance, or restore natural stabilization systems,” if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion “interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit].” We understand that local communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and

returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA’s purpose, are “of significant value to society,”² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers (“Corps”), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service’s (nor the action agency’s) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the “long-term conservation of these fish, wildlife, and other natural resources” associated with coastal barriers. *Id.* § 3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in “threats to human life, health, and property.” *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to “mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G).

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² CBRA House Report (September 21, 1982) at 8.

³ CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

⁴ We note that “damage” here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

From: [Romanik, Peg](#)
To: [Margaret Everson](#)
Subject: CBRA
Date: Monday, November 4, 2019 10:52:37 AM
Attachments: [CBRA signed memo.pdf](#)

Margaret, attached is our legal guidance on the recent CBRA issue. I will walk down hard copy to your office later today. Do you want me to send to Gary or should I? 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



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Re: Coastal Barrier Resources Act
Date: October 30, 2019

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to

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By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and

returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA’s purpose, are “of significant value to society,”² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers (“Corps”), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service’s (nor the action agency’s) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the “long-term conservation of these fish, wildlife, and other natural resources” associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in “threats to human life, health, and property.” *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to “mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G).

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⁴ We note that “damage” here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

From: [Morris, Charisa](#)
To: [Sellars, Roslyn](#)
Cc: [Margaret Everson](#); [Bryan Arroyo](#); [Stephen Guertin](#); [Melissa Beaumont](#)
Subject: Re: Scanned CBRA doc
Date: Monday, November 4, 2019 1:09:37 PM

Thank you, Roslyn!

On Mon, Nov 4, 2019 at 9:47 AM Sellars, Roslyn <roslyn_sellars@fws.gov> wrote:

Attached is the CBRA doc as requested by Charisa, The original is on Margaret's chair.

Roslyn

--

She/Her/Hers | Charisa.Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

From: [Sellars, Roslyn](#)
To: [Margaret Everson](#); [Bryan Arroyo](#); [Stephen Guertin](#); [Morris, Charisa](#); [Melissa Beaumont](#)
Subject: Re: Scanned CBRA doc2
Date: Monday, November 4, 2019 5:11:04 PM
Attachments: [CBRA docs2.pdf](#)

Attached are docs (CBRA) from the Secretary's office. The originals are on Margaret's chair.
Roslyn

On Mon, Nov 4, 2019 at 9:47 AM Sellars, Roslyn <roslyn_sellars@fws.gov> wrote:
Attached is the CBRA doc as requested by Charisa, The original is on Margaret's chair.
Roslyn

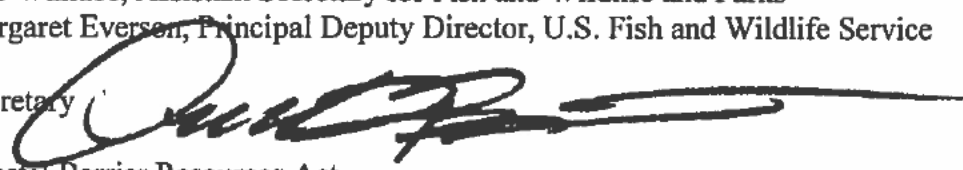


THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

Memorandum

To: Rob Wallace, Assistant Secretary for Fish and Wildlife and Parks
Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service

From: Secretary 

Subject: Coastal Barrier Resources Act

Attached is correspondence regarding the above-referenced statute. Please notify your staffs of our position on this matter going forward, and modify any communications to bring them in compliance with the Department of the Interior's understanding of the language.

Attachment



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior's (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, "to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers," CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

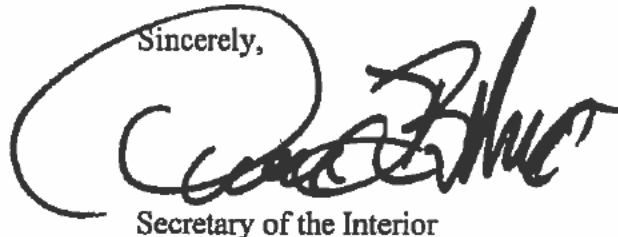
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce B. Babbitt", is written over a large, loopy circular flourish.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior's (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, "to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers," CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

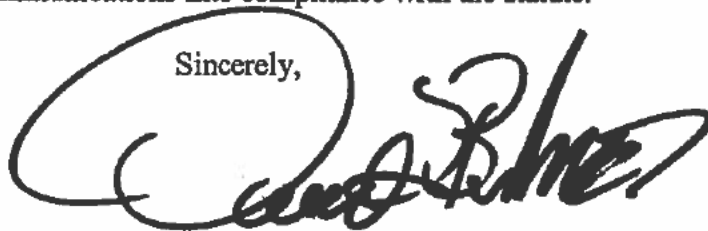
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Bruce B. Babbitt, the Secretary of the Interior at the time. The signature is written in a cursive, flowing style with a large initial 'B'.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rouzer:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior's (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, "to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers," CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

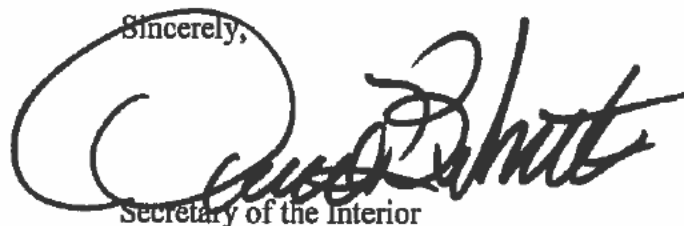
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Babbitt", written over a large, loopy circular flourish.

Secretary of the Interior

Congress of the United States
Washington, DC 20515

October 25, 2019

The Honorable David Bernhardt
Secretary, U.S. Department of Interior
1849 C St., NW
Washington, DC 20240

Dear Secretary Bernhardt:

We write to you about an interpretation of the Coastal Barrier Resources Act (CBRA) that could jeopardize public and private infrastructure, small businesses and regional economies. The interpretation unnecessarily results in increased ecological impacts as well as increased Federal expenditures. In 2016, the U.S. Fish and Wildlife Service ("Service") issued an interpretation of a 1994 Solicitor's Opinion that has caused several ongoing coastal storm damage reduction (CSDR) projects from moving forward, even though these projects meet all the appropriate requirements of the CBRA and National Environmental Policy Act (NEPA). We believe that correcting the 2016 interpretation and the underlying 1994 Solicitor's Opinion is consistent with our infrastructure focus and small business support while retaining CBRA and NEPA regulatory compliance.

In 1982, the CBRA was enacted into law and established the John H. Chafee Coastal Barrier Resources System (System) to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers" in coastal areas along the Atlantic Ocean, Gulf of Mexico, Great Lakes, Puerto Rico, and the Virgin Islands. One objective was to ensure the proper balance of ecological, community and economic considerations on undeveloped coastal barriers. As such, CBRA prohibits new federal financial assistance in System "units" with exceptions outlined in Section 6 of the statute (16 U.S.C. 3505). While the original intent of the law is laudable, the current interpretation has unintended consequences, particularly as they relate to CSDR projects that are partially federally funded, resource management and economic impacts.

In our congressional districts, coastal storm damage reduction projects carried out by the U.S. Army Corps of Engineers (USACE) in partnership with our respective states have been stalled, and their costs have ballooned, because of a 2016 interpretation of a 1994 Department of Interior Solicitor's Opinion (FWS.CW.0380) by the Service that essentially states that sand from a System unit cannot be placed on a non-CBRA shoreline. This decision suddenly prohibited sand recycling from certain System units - despite the Service in 1996 having previously allowed sand recycling from these same System units per CBRA's exceptions.

For example, the congressionally authorized *New Jersey Shore Protection, Townsends Inlet to Cape May Inlet* project had previously accessed System unit NJ-09 as a borrow site multiple times with the consent of the Service. Yet the 2016 Service interpretation suddenly prevented access to the borrow site, despite the environmental benefits of the project, and increased project costs by at least \$6.5 million, stalling the required periodic nourishment. As a

result of the determination by the Service that sand cannot be beneficially used from CBRA units, specifically NJ-09, to benefit land immediately adjacent to but not located within the CBRA unit, Stone Harbor and North Wildwood are directly impacted to such an extent that they are facing loss of their economic ability to meet the USACE's Project Cooperation Agreement requirements. Moreover, the significant environmental benefits of CSDR projects such as improved wildlife habitat conditions that have occurred over the past several years are being jeopardized directly as a result of the Service's 2016 decision. Likewise, similar challenges exist with the CSDR projects at Carolina Beach and Wrightsville Beach, NC. These projects have used passive-infill inlet borrow sites in CBRA zones for decades. If forced to use offshore borrow sites instead because of the Service's interpretation, these projects would incur greater environmental impacts and costs to the federal government.

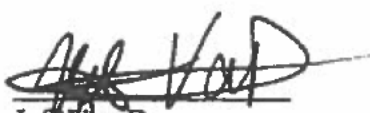
CSDR projects not only protect public and private infrastructure, but often have the added benefit of enhancing the environmental condition e.g. turtle and shorebird usage. These projects meet both NEPA and CBRA's goals to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers." A CSDR project typically dredges sand from an approved borrow site and deposits that sand within a defined and approved shoreline template imitating a nature based infrastructure system therefore, meeting the exception definition under 16 USC 3505(a)(6)(G) of "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Beaches represent a natural stabilization system and a CSDR is simply a restoration of that natural stabilization system. Furthermore, evidence shows that CSDRs have contributed and benefited "the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects" as defined in 16 U.S.C. 3505(a)(6)(A).


In our reading the statute, we feel that the current NEPA compliant inlet borrow sites meet the spirit and intent of CBRA. Therefore, we ask for your favorable consideration to allow continued use of these inlet borrow sites as allowed exceptions under CBRA. In light of our reading of the statute, we have a question for the Department of Interior to consider.

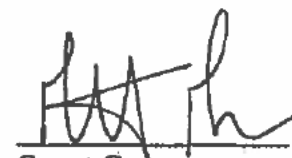
1. Does the Department take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

We thank you for your leadership and attention to this matter that is of grave importance to our communities.

Sincerely,


Jeff Van Drew
Member of Congress


David Rouzer
Member of Congress


Garret Graves
Member of Congress



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Richard Burr
United States Senate
Washington, DC 20510

Dear Senator Burr:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Thom Tillis
United States Senate
Washington, DC 20510

Dear Senator Tillis:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Doug Lamborn
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lamborn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Neal Dunn
U.S. House of Representatives
Washington, DC 20515

Dear Representative Dunn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Randy Weber
U.S. House of Representatives
Washington, DC 20515

Dear Representative Weber:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

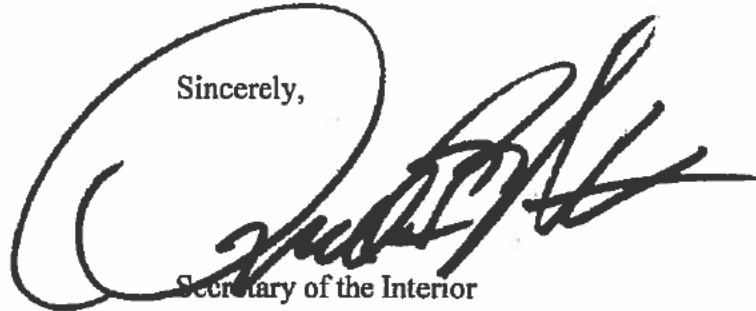
NOV 04 2019

The Honorable Frank Pallone
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pallone:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

OCT 30 2019

Memorandum

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Subject: Coastal Barrier Resources Act

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems," if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion "interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit]." We understand that local

communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to

¹ CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA's purpose, are "of significant value to society,"² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers ("Corps"), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service's (nor the action agency's) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the "long-term conservation of these fish, wildlife, and other natural resources" associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in "threats to human life, health, and property." *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to "mimic, enhance, or restore natural stabilization systems." *Id.* § 3505(a)(6)(G).

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

² CBRA House Report (September 21, 1982) at 8.

³ CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

⁴ We note that "damage" here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

From: [Beaumont, Melissa](#)
To: [Wainman, Barbara](#)
Subject: Fwd: CBRA OCL Draft Response
Date: Tuesday, November 5, 2019 4:58:35 AM
Attachments: [CBRA OCL draft response clean 415.docx](#)

Sorry just got back to my desk. Here you go!

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

From: **Cole Rojewski** <cole_rojewski@ios.doi.gov>
Date: Thu, Oct 31, 2019 at 7:04 PM
Subject: CBRA OCL Draft Response
To: Margaret Everson <Margaret_E_Everson@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Amanda Hall
<amanda_hall@ios.doi.gov>

Margaret-

I wanted you to see the draft CBRA letter. I expect OCL will roll this out Monday morning. We will keep you updated once it's locked in.

Thanks,
Cole

Sent from my iPad

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

NOTICE: This electronic mail message (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this Message in error, please notify the sender immediately and destroy all copies.



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

OCT 30 2019

IN REPLY REFER TO:

Memorandum

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Subject: Coastal Barrier Resources Act

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems," if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion "interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit]." We understand that local

communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to

¹ CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA's purpose, are "of significant value to society,"² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers ("Corps"), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service's (nor the action agency's) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the "long-term conservation of these fish, wildlife, and other natural resources" associated with coastal barriers. *Id.* § 3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in "threats to human life, health, and property." *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to "mimic, enhance, or restore natural stabilization systems." *Id.* § 3505(a)(6)(G).

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

² CBRA House Report (September 21, 1982) at 8.

³ CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

⁴ We note that "damage" here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

From: [Playforth, Taylor](#)
To: [Gustavson, Angela](#)
Cc: [Amanda Hall](#); [Martin Kodis](#); [Melissa Beaumont](#); [Katie Mills](#); [Budd-Falen, Karen](#); [Margaret Everson](#)
Subject: Re: CBRA memo
Date: Tuesday, November 5, 2019 4:26:34 PM
Attachments: [11.04.19 Bernhardt CBRA Response \(3\) \(1\) \(1\).pdf](#)
[11.04.19 based on previous CBRA interest - Burr, Dunn, Lamborn, Pallone, Tillis, Weber.pdf](#)

+ Karen and Margaret

In providing the response to Congress, one follow up question I received is when and how FWS will be updating their publically available resources to reflect the updated guidance?

On Tue, Nov 5, 2019 at 2:14 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:
Apologies for the delay, sharing the Van Drew, Rouzer, Graves letter and the based on previous interest letters as well.

On Tue, Nov 5, 2019 at 1:51 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:
Thanks, Amanda. Our correspondence office was just able to track down copies of this letter so I have it now.

Angela

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

On Tue, Nov 5, 2019 at 1:47 PM Amanda Hall <amanda_hall@ios.doi.gov> wrote:
Looping in Taylor who's been the lead on this effort.

On Nov 5, 2019, at 1:45 PM, Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Hi Amanda,

We saw there was a letter sent from the Secretary to Rep. Van Drew on November 4 that's shown in this [news release](#) from Rep. Van Drew, but the news release doesn't include the full letter. This is related to the new SOL memo on sand mining in CBRA areas. Do you have a copy of that letter that you can share with us?

Thanks,

Angela

Angela Gustavson

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

On Thu, Oct 31, 2019 at 4:14 PM Martin Kodis <martin_kodis@fws.gov> wrote:

Ok. Thanks. We will sit tight.

Sent from my iPhone

On Oct 31, 2019, at 4:13 PM, Hall, Amanda <amanda_hall@ios.doi.gov> wrote:

Hello - Yes OCL will take care of Hill outreach on this. I'll let you know who we reach out to when that's more solidified. Thank you for offering to help!

Best,

Amanda

On Thu, Oct 31, 2019 at 2:23 PM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Amanda,

I hope your day is going well.

I understand that there is a new SOL memo on sand mining in CBRA areas. Is OCL planning to do any Hill notification on this change? Can you please confirm and also let me know if there's anything we can do to help you on this. We'd appreciate to know, for our awareness, which offices are contacted if OCL is doing so.

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

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Amanda Hall
Advisor, Office of Congressional and Legislative Affairs
U.S. Department of the Interior

*NOTE: Every email I send or receive is subject to
release under the Freedom of Information Act.*

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Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

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Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

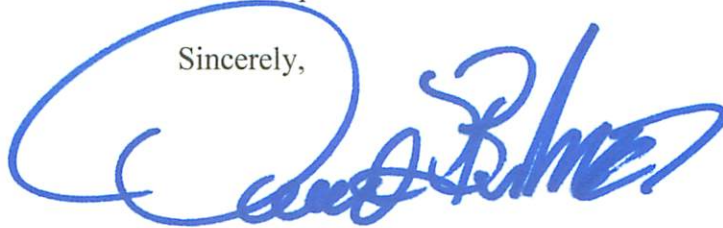
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. J. Palmer", is written over a large, loopy blue oval that serves as a placeholder for a stamp or seal.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rouzer:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

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A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Babbitt", is written over the typed name. The signature is fluid and cursive, with a large initial "B".

Bruce Babbitt
Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

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Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

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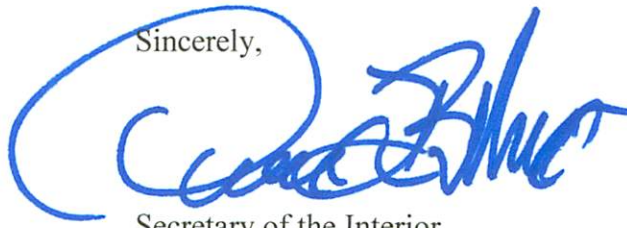
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Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Richard Burr
United States Senate
Washington, DC 20510

Dear Senator Burr:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

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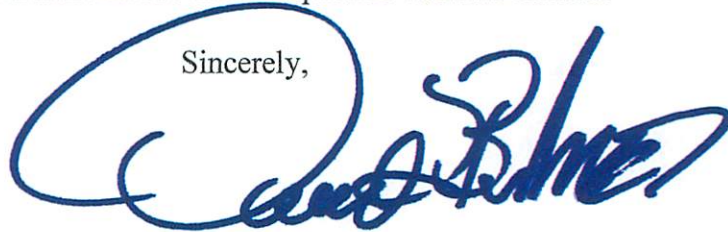
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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

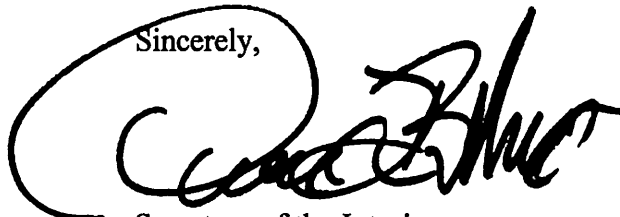
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A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Neal Dunn
U.S. House of Representatives
Washington, DC 20515

Dear Representative Dunn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rouzer:

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

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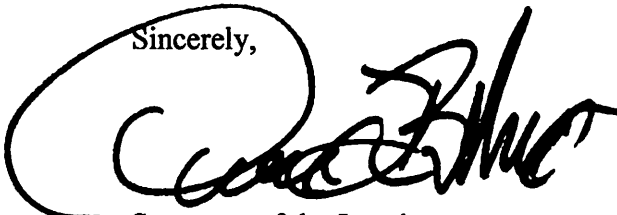
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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Doug Lamborn
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lamborn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

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Secretary of the Interior



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WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

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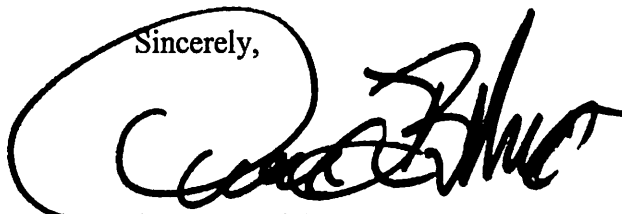
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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Frank Pallone
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pallone:

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Sincerely,

Secretary of the Interior

Enclosure



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NOV 04 2019

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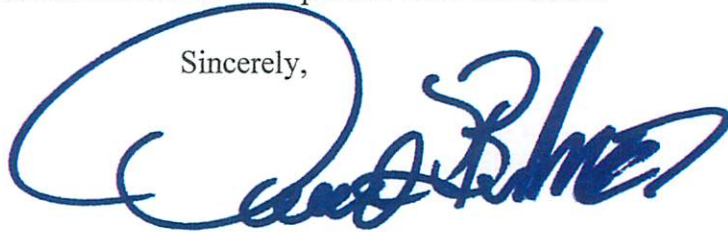
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Sincerely,

A handwritten signature in blue ink, appearing to read "C. J. Egan", is written over the word "Sincerely,".

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

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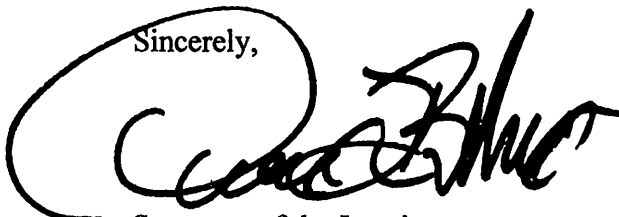
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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Thom Tillis
United States Senate
Washington, DC 20510

Dear Senator Tillis:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rouzer:

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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

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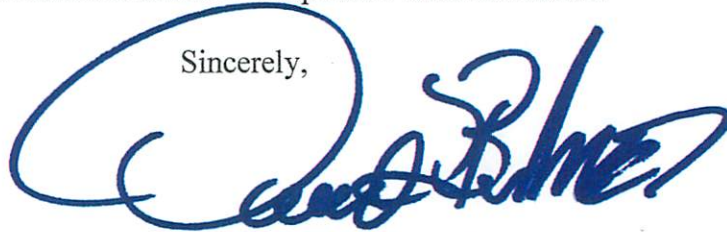
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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

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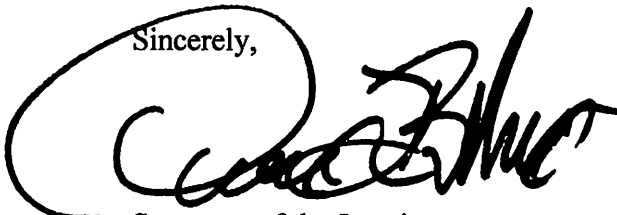
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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Randy Weber
U.S. House of Representatives
Washington, DC 20515

Dear Representative Weber:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rouzer:

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Sincerely,

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Bruce Babbitt
Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

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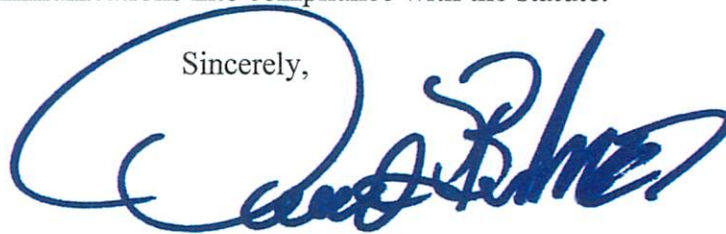
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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

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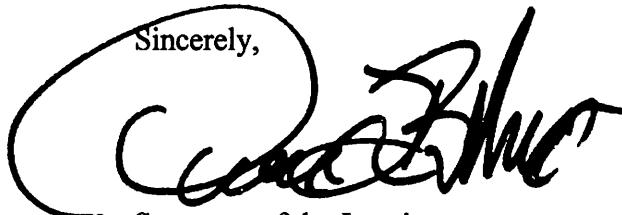
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Secretary of the Interior

From: [Playforth, Taylor](#)
To: [Gustavson, Angela](#)
Cc: [Amanda Hall](#); [Martin Kodis](#); [Melissa Beaumont](#); [Katie Mills](#)
Subject: Re: CBRA memo
Date: Tuesday, November 5, 2019 6:03:45 PM
Attachments: [11.04.19 Bernhardt CBRA Response \(3\) \(1\).pdf](#)
[11.04.19 based on previous CBRA interest - Burr, Dunn, Lamborn, Pallone, Tillis, Weber.pdf](#)

Apologies for the delay, sharing the Van Drew, Rouzer, Graves letter and the based on previous interest letters as well.

On Tue, Nov 5, 2019 at 1:51 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:
Thanks, Amanda. Our correspondence office was just able to track down copies of this letter so I have it now.

Angela

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

On Tue, Nov 5, 2019 at 1:47 PM Amanda Hall <amanda_hall@ios.doi.gov> wrote:
Looping in Taylor who's been the lead on this effort.

On Nov 5, 2019, at 1:45 PM, Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Hi Amanda,

We saw there was a letter sent from the Secretary to Rep. Van Drew on November 4 that's shown in this [news release](#) from Rep. Van Drew, but the news release doesn't include the full letter. This is related to the new SOL memo on sand mining in CBRA areas. Do you have a copy of that letter that you can share with us?

Thanks,

Angela

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

On Thu, Oct 31, 2019 at 4:14 PM Martin Kodis <martin_kodis@fws.gov> wrote:

Ok. Thanks. We will sit tight.

Sent from my iPhone

On Oct 31, 2019, at 4:13 PM, Hall, Amanda <amanda_hall@ios.doi.gov> wrote:

Hello - Yes OCL will take care of Hill outreach on this. I'll let you know who we reach out to when that's more solidified. Thank you for offering to help!

Best,

Amanda

On Thu, Oct 31, 2019 at 2:23 PM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Amanda,

I hope your day is going well.

I understand that there is a new SOL memo on sand mining in CBRA areas. Is OCL planning to do any Hill notification on this change? Can you please confirm and also let me know if there's anything we can do to help you on this. We'd appreciate to know, for our awareness, which offices are contacted if OCL is doing so.

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

--

Amanda Hall
Advisor, Office of Congressional and Legislative Affairs
U.S. Department of the Interior

*NOTE: Every email I send or receive is subject to release
under the Freedom of Information Act.*

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

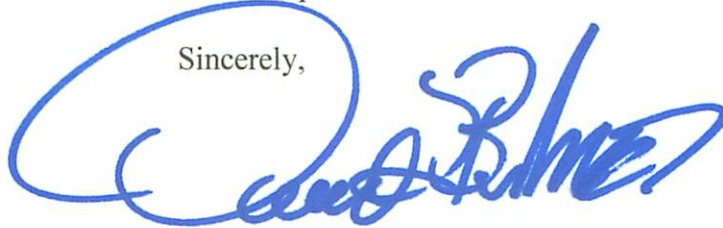
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Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. J. Palmer", is written over a large, loopy blue oval that serves as a placeholder for a stamp.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rouzer:

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Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Babbitt", is written over the word "Secretary". The signature is stylized with a large, looping initial "B".

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

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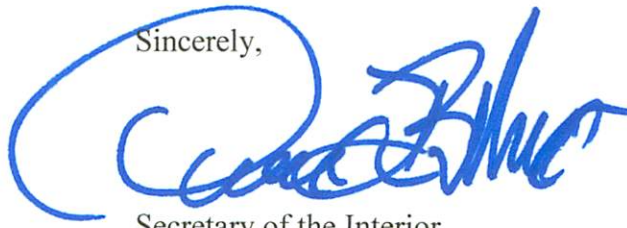
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Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. E. Feltner", is written over the word "Sincerely,". The signature is stylized and cursive.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Richard Burr
United States Senate
Washington, DC 20510

Dear Senator Burr:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure

From: [Everson, Margaret](#)
To: [FWS Directorate & Deputies](#)
Cc: [Melissa Beaumont](#); [Morris, Charisa](#); [Kodis, Martin](#)
Subject: Fwd: Scanned CBRA doc2
Date: Tuesday, November 5, 2019 7:10:59 PM
Attachments: [CBRA docs2.pdf](#)

| FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best
Margaret

From: [Randolph, Nikki](#)
To: [Melissa Beaumont](#); [Morris, Charisa](#)
Subject: Van Drew Letter (et. al) on CBRA
Date: Wednesday, November 6, 2019 4:49:46 AM
Attachments: [Vaan Drew etc..pdf](#)

Signed By Secretary mailed out yesterday

--

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

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



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew
U.S. House of Representatives
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

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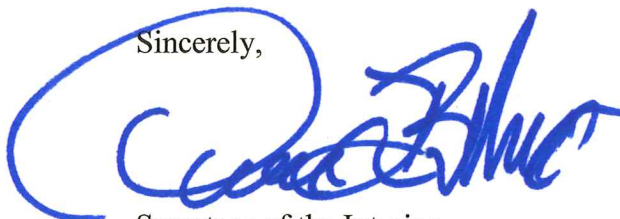
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A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

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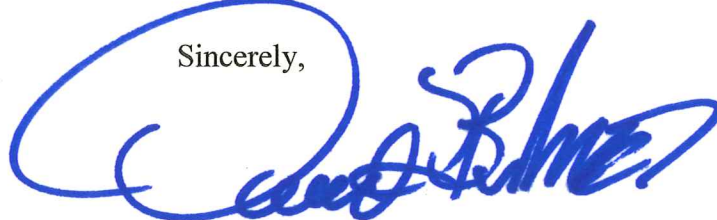
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Sincerely,

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Secretary of the Interior



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 04 2019

The Honorable David Rouzer
U.S. House of Representatives
Washington, DC 20515

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Sincerely,



Bruce B. Babbitt

Secretary of the Interior

From: [Martin Kodis](#)
To: matthew_huggler@fws.gov
Cc: [Angela Gustavson](#); melissa_beaumont@fws.gov
Subject: Fwd: CBRA memo
Date: Wednesday, November 6, 2019 10:10:36 AM
Attachments: [ATT00001.htm](#)
[11.04.19 Bernhardt CBRA Response \(3\) \(1\) \(1\).pdf](#)
[11.04.19 based on previous CBRA interest - Burr, Dunn, Lamborn, Pallone, Tillis, Weber.pdf](#)
[ATT00002.htm](#)

Matt for your awareness see below. I suspect that the program is trying to figure things out now as they got the memo only a couple of days ago.

MK

Sent from my iPhone

Begin forwarded message:

From: "Playforth, Taylor" <taylor_playforth@ios.doi.gov>
To: "Gustavson, Angela" <angela_gustavson@fws.gov>
Cc: Amanda Hall <amanda_hall@ios.doi.gov>, Martin Kodis <martin_kodis@fws.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>, Katie Mills <katie_mills@ios.doi.gov>, "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, Margaret Everson <Margaret_E_Everson@fws.gov>
Subject: Re: CBRA memo

+ Karen and Margaret

In providing the response to Congress, one follow up question I received is when and how FWS will be updating their publically available resources to reflect the updated guidance?

On Tue, Nov 5, 2019 at 2:14 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

Apologies for the delay, sharing the Van Drew, Rouzer, Graves letter and the based on previous interest letters as well.

On Tue, Nov 5, 2019 at 1:51 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Thanks, Amanda. Our correspondence office was just able to track down copies of this letter so I have it now.

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253

Mobile: 202-909-5105
angela_gustavson@fws.gov

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Deputy Chief
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U.S. Fish and Wildlife Service
Office: 703-358-2253
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Hi Amanda,

I hope your day is going well.

I understand that there is a new SOL memo on sand mining in CBRA areas. Is OCL planning to do any Hill notification on this change? Can you please confirm and also let me know if there's anything we can do to help you on this. We'd appreciate to know, for our awareness, which offices are contacted if OCL is doing so.

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

--

Amanda Hall
Advisor, Office of Congressional and
Legislative Affairs
U.S. Department of the Interior

*NOTE: Every email I send or receive is
subject to release under the Freedom of
Information Act.*

--

Taylor Playforth
Senior Advisor

US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

From: [Playforth, Taylor](#)
To: [Kodis, Martin](#)
Cc: [Hall, Amanda](#); [Berg, Elizabeth](#); [Gustavson, Angela](#); [Melissa Beaumont](#)
Subject: Re: Notifications to Committee staff on CBRA SOL Memo
Date: Thursday, November 7, 2019 4:27:49 PM

I'm good with Liz getting more context but would like to participate in a pre-brief before executing the call.

On Thu, Nov 7, 2019 at 11:46 AM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Taylor,

She didn't have many specific questions beyond "can this be done without a solicitor's opinion to overturn the existing solicitor's interpretation?" I didn't answer that, not wanting to get crosswise with what you mentioned below about sharing SOL internal documents. She also had a general question about what will change and what will the effect be on the ground.

If you're ok with it Taylor and Amanda - Liz on our FWS CLA staff, our lead for CBRA, can connect with Lora to offer the call, and ask her if she has any specific questions so that we can prepare and make the best use of the time.

As we wait for Taylor's response Liz, can you please work through Gary Frazer to identify the best person for the call and report back to this group? Adding Melissa for her awareness.

Thanks,

Marty

On Wed, Nov 6, 2019 at 8:10 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

Let's schedule a call to fulfill her request, are there specific questions she would like answered? Who do you all suggest as the SME to participate in the call?

On Wed, Nov 6, 2019 at 5:05 PM Martin Kodis <martin_kodis@fws.gov> wrote:

Hi all. I just fielded a call on this from Lora Snyder, HNRC Majority. She's aware of the letter to Rep. Van Drew and requested to be briefed on the issue.

Please advise.

Marty

Sent from my iPhone

On Nov 6, 2019, at 1:38 PM, Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

We shouldn't be sharing SOL memos, those are internal Department documents and the letter is already publicly available so after a second thought I'm not sure any notification to committee staff is necessary at this time; let's just hold on this exercise.

thanks,

On Wed, Nov 6, 2019 at 1:34 PM Berg, Elizabeth
<elizabeth_berg@fws.gov> wrote:

Hi Amanda,

Would you recommend sharing the incoming letter from Representatives Van Drew et al. and the Secretary's response or just the CBRA SOL memo with committee staff as an FYI?

Thank you,
Liz

On Wed, Nov 6, 2019 at 12:09 PM Gustavson, Angela
<angela_gustavson@fws.gov> wrote:

Thanks Amanda and Taylor. We'll copy you on a message we send out to committee staff.

Angela

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

On Wed, Nov 6, 2019 at 12:00 PM Hall, Amanda
<amanda_hall@ios.doi.gov> wrote:

I'm good with y'all sending the info to the committees. Please cc me when you do. Thanks for your help.

On Wed, Nov 6, 2019 at 11:51 AM Playforth, Taylor
<taylor_playforth@ios.doi.gov> wrote:

I defer to Amanda.

On Wed, Nov 6, 2019 at 11:50 AM Gustavson, Angela
<angela_gustavson@fws.gov> wrote:

Hi Taylor and Amanda,

Thanks again for sending us copies of the Secretary's letters to Members on the new SOL memo on sand mining in CBRA units.

We also wanted to see if you plan to notify committee staff about this new SOL memo. House Natural Resources and Senate EPW staff would be interested and it would be good to notify them if you haven't already. Please let us know if you'd like us to help in any way. Also, I can coordinate with our budget office on any notifications that you or PMB provide to appropriations committee staff.

Thanks,

Angela

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

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

Amanda Hall
Advisor, Office of Congressional and Legislative Affairs
U.S. Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

--

Taylor Playforth
Senior Advisor
US Department of the Interior

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(202) 795-0977

--

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--

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

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

From: [Shire, Gavin](#)
To: [Goodwin, Nicholas](#)
Cc: [Barbara Wainman](#); [Laury Parramore](#); [Carol Danko](#); [Margaret Everson](#); [Melissa Brown](#); [Schroeder, Darin](#); [OCO-Theresa Eisenman](#); [Matthew Huggler](#)
Subject: Re: CBRA Statement from FWS
Date: Friday, November 8, 2019 10:45:05 AM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)

Here is the proposed final:

"The Service sought legal advice from the Department of the Interior Solicitor's Office on a specific question regarding beach nourishment and stabilization projects as they relate to the Coastal Barrier Resources Act. They have provided us with a revised interpretation of the law that we will follow and advise our federal agency partners accordingly as we provide assistance on such projects in the future."

Good to provide to E&E and others to come?

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

On Fri, Nov 8, 2019 at 8:47 AM Goodwin, Nicholas <nicholas_goodwin@ios.doi.gov> wrote:

Appreciate your suggestions, Gavin. Please send the statement before noon today, and let us know if you get any inquiries on this topic, requesting background information or otherwise.

Thank you,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



On Fri, Nov 8, 2019 at 8:33 AM Gavin Shire <gavin_shire@fws.gov> wrote:
+ Matt

We won't be doing any social or proactive media. We will continue to provide background on the program as asked to ensure reporters have their facts straight about CBRA in general (not in relation to this change). If FWS needs to say anything, it should be that this is a legal interpretation of the law by our solicitors that supersedes the previous interpretation in regard to this one aspect of the act. We continue to implement the act in accordance with our mandate to protect important coastal ecosystems. We will not comment on rumor or speculation.

My preference, though, is that we simply direct them to OCO.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
[703-358-2649](tel:703-358-2649) (o)
[703-346-9123](tel:703-346-9123) (c)
gavin_shire@fws.gov

On Nov 8, 2019, at 8:22 AM, Goodwin, Nicholas
<nicholas_goodwin@ios.doi.gov> wrote:

I just spoke with Margaret. I've attached and included all of the information on this to make sure everyone is up to speed.

Any questions, please let me know.

Thanks!

—

Trump Administration Makes It Easier to Dredge Protected Areas to Restore Beaches
<https://www.nytimes.com/2019/11/07/climate/trump-beaches-sand-protected-areas.html>

“The Trump Administration is committed to protecting our coastlines and utilizing our available resources to restore, enhance or stabilize our beaches consistent with the law Congress wrote,” said U.S Secretary

David Bernhardt. “Today’s notification clarified our understanding of the crystal clear direction provided by Congress decades ago.”

Hill Press Release: <https://vandrew.house.gov/media/press-releases/van-drew-overcomes-bureaucratic-objections-help-local-governments-cape-may>

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



[<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

On Fri, Nov 8, 2019 at 7:03 AM Goodwin, Nicholas

<nicholas_goodwin@ios.doi.gov> wrote:

Gavin, Barbara, and Laury,

In light of additional media attention on the changes to CBRA implementation, please work on a statement from FWS in support of the changes to CBRA per the Secretary’s letter today. Let me know if you recommend this coming from Margaret or someone else. It would be great to have the program lead provide a statement of support.

It would also be great to highlight this on social media, denoting the benefits of this policy change. Please have this ready by noon today.

Thank you,

--

Nick Goodwin
Department of the Interior
(202) 412-2249

<11.04.19 Bernhardt CBRA Response (3) (1).pdf>



From: [Shire, Gavin](#)
To: [Goodwin, Nicholas](#)
Cc: [Barbara Wainman](#); [Laury Parramore](#); [Carol Danko](#); [Margaret Everson](#); [Melissa Brown](#); [Schroeder, Darin](#); [OCO-Theresa Eisenman](#); [Matthew Huggler](#)
Subject: Re: CBRA Statement from FWS
Date: Friday, November 8, 2019 10:59:31 AM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)

We now have an inquiry from E&E. 11 am deadline. Working with Gary to cement a FWS quote. Draft as follows:

The Service sought legal advice from the Department of the Interior Solicitor's Office regarding a specific aspect of beach nourishment and stabilization as it relates to the Coastal Barrier Resources Act. They have provided us with a revised interpretation of the law that we will follow and advise our federal agency partners accordingly as we provide assistance on such projects in the future.

Will provide the final ASAP, but don't expect it to differ too much from this.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
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5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

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Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



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+ Matt

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My preference, though, is that we simply direct them to OCO.

G

Gavin Shire
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[703-346-9123](tel:703-346-9123) (c)
gavin_shire@fws.gov

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Any questions, please let me know.

Thanks!

—

Trump Administration Makes It Easier to Dredge Protected Areas to Restore Beaches
<https://www.nytimes.com/2019/11/07/climate/trump-beaches-sand-protected-areas.html>

“The Trump Administration is committed to protecting our coastlines and utilizing our available resources to restore, enhance or stabilize our

beaches consistent with the law Congress wrote,” said U.S Secretary David Bernhardt. “Today’s notification clarified our understanding of the crystal clear direction provided by Congress decades ago.”

Hill Press Release: <https://vandrew.house.gov/media/press-releases/van-drew-overcomes-bureaucratic-objections-help-local-governments-cape-may>

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



[<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

On Fri, Nov 8, 2019 at 7:03 AM Goodwin, Nicholas

<nicholas_goodwin@ios.doi.gov> wrote:

Gavin, Barbara, and Laury,

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It would also be great to highlight this on social media, denoting the benefits of this policy change. Please have this ready by noon today.

Thank you,

--

Nick Goodwin
Department of the Interior
(202) 412-2249

<11.04.19 Bernhardt CBRA Response (3) (1).pdf>



From: [Goodwin, Nicholas](#)
To: [Barbara Wainman](#); [Gavin Shire](#); [Laury Parramore](#)
Cc: [Carol Danko](#); [Margaret Everson](#); [Melissa Brown](#); [Schroeder, Darin](#); [OCO-Theresa Eisenman](#)
Subject: Re: CBRA Statement from FWS
Date: Friday, November 8, 2019 11:07:41 AM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)
[11.04.19 Bernhardt CBRA Response \(3\) \(1\).pdf](#)

I just spoke with Margaret. I've attached and included all of the information on this to make sure everyone is up to speed.

Any questions, please let me know.

Thanks!

—

Trump Administration Makes It Easier to Dredge Protected Areas to Restore Beaches
<https://www.nytimes.com/2019/11/07/climate/trump-beaches-sand-protected-areas.html>

“The Trump Administration is committed to protecting our coastlines and utilizing our available resources to restore, enhance or stabilize our beaches consistent with the law Congress wrote,” said U.S Secretary David Bernhardt. “Today’s notification clarified our understanding of the crystal clear direction provided by Congress decades ago.”

Hill Press Release: <https://vandrew.house.gov/media/press-releases/van-drew-overcomes-bureaucratic-objections-help-local-governments-cape-may>

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



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It would also be great to highlight this on social media, denoting the benefits of this policy change. Please have this ready by noon today.

Thank you,

--

Nick Goodwin
Department of the Interior
(202) 412-2249



From: [Beaumont, Melissa](#)
To: [Katie Mills](#); [Playforth, Taylor](#); [Amanda Hall](#)
Subject: Fwd: Scanned CBRA doc2
Date: Friday, November 8, 2019 11:10:38 AM
Attachments: [CBRA docs2.pdf](#)

FYI - Margaret just sent this out.

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

From: **Everson, Margaret** <margaret_e_everson@fws.gov>
Date: Tue, Nov 5, 2019 at 6:43 PM
Subject: Fwd: Scanned CBRA doc2
To: FWS Directorate & Deputies <fwsdirectanddep@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Morris, Charisa <charisa_morris@fws.gov>, Kodis, Martin <martin_kodis@fws.gov>

| FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best
Margaret

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Kodis, Martin](#)
To: [Hall, Amanda](#); [Playforth, Taylor](#); [Dominic Maione](#)
Cc: [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Fwd: [EXTERNAL] CBRA solicitor's memo
Date: Friday, November 8, 2019 2:17:39 PM

Hi folks,

Any thoughts on the request below? Taylor, you indicated in a separate email that we shouldn't share outside of DOI. I'd note that the previous SOL CBRA memo (from 1994) was readily shared outside the Dept. over the years.

Thank you.

Marty

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

From: **Snyder, Lora** <Lora.Snyder@mail.house.gov>
Date: Fri, Nov 8, 2019 at 2:06 PM
Subject: [EXTERNAL] CBRA solicitor's memo
To: Kodis, Martin <martin_kodis@fws.gov>

I understand there is a new solicitor's memo. Can you please share it with me?

Lora D. Snyder

Staff Director

Subcommittee on Water, Oceans, and Wildlife

House Committee on Natural Resources

Chairman Raúl M. Grijalva ([AZ-3](#))

(202) 225-6065

Connect with the Committee Democrats:

[Website](#) | [Twitter](#) | [Facebook](#) | [Youtube](#)

--

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: [John Tanner](#)
To: melissa_brown@ios.doi.gov
Cc: [Melissa Beaumont](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Friday, November 8, 2019 2:42:36 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

On Nov 8, 2019, at 11:48 AM, Brown, Melissa <melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA. **Deadline is at noon.** Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior





From: [Shire, Gavin](#)
To: [Beaumont, Melissa](#)
Cc: [Gary Frazer](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Friday, November 8, 2019 3:05:54 PM
Attachments: [iconfinder youtube-square-shadow-social-media 765073.png](#)

No. All good here.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

On Fri, Nov 8, 2019 at 12:25 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
I just spoke with Gary who has no edits/confirmed it was accurate. Gavin did you have any changes?

On Fri, Nov 8, 2019 at 12:13 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Gavin & Gary,

Below is the updated statement that we need to turn around in 10. Your help is much appreciated!

Melissa

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

From: John Tanner <john_tanner@ios.doi.gov>
Date: Fri, Nov 8, 2019 at 12:12 PM
Subject: Re: FOR APPROVAL: CBRA statement
To: <melissa_brown@ios.doi.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

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--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior



--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205



From: [Leopoldo Miranda](#)
To: [Everson, Margaret](#)
Subject: Re: Scanned CBRA doc2
Date: Friday, November 8, 2019 3:43:56 PM

This is great! We have been “fighting” this for some time now in NC, SC and other states. Very welcomed news!!!!

Leo

Leopoldo Miranda, Regional Director
USFWS, South Atlantic-Gulf &
Mississippi-Basin
[404-679-4000](tel:404-679-4000)

Sent from my iPhone

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 Nov 5, 2019, at 6:42 PM, Everson, Margaret <margaret_e_everson@fws.gov> wrote:

| FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best
Margaret

<CBRA docs2.pdf>

From: [Martin Kodis](#)
To: [Melissa Beaumont](#)
Cc: [Gavin Shire](#); [Charisa Morris](#)
Subject: Re: CBRA Website Update
Date: Friday, November 8, 2019 4:48:34 PM

I am certain any appropriate folks (that site is managed by the CBRA team) are around till Tues. But will see. The request came first in Nicks email below at 355 right? There was no earlier communication?

Thanks,

Marty

Sent from my iPhone

On Nov 8, 2019, at 4:35 PM, Melissa Beaumont <melissa_beaumont@fws.gov> wrote:

:) do you mind sending to the appropriate folks?

Sent from my iPhone

On Nov 8, 2019, at 4:33 PM, Martin Kodis
<martin_kodis@fws.gov> wrote:

No

Sent from my iPhone

On Nov 8, 2019, at 4:29 PM, Melissa Beaumont
<melissa_beaumont@fws.gov> wrote:

Did you see this earlier?

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas"
<nicholas_goodwin@ios.doi.gov>
Date: November 8, 2019 at 3:55:00 PM
EST
To: Margaret Everson
<margaret_e_everson@fws.gov>, John
Tanner <john_tanner@ios.doi.gov>, Melissa
Beaumont <melissa_beaumont@fws.gov>

Cc: "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, OCO-Theresa Eisenman
<theresa_eisenman@ios.doi.gov>,
"Schroeder, Darin"
<Darin_Schroeder@ios.doi.gov>, Melissa Brown <melissa_brown@ios.doi.gov>
Subject: CBRA Website Update

Margaret/John/Melissa,

Please update the CBRA website -
- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.

Thank you,

—

(b) (5)



(b) (5)



Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249

 [<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

From: [Melissa Beaumont](#)
To: [Martin Kodis](#)
Cc: [Gavin Shire](#); [Charisa Morris](#)
Subject: Re: CBRA Website Update
Date: Friday, November 8, 2019 7:16:21 PM

:) do you mind sending to the appropriate folks?

Sent from my iPhone

On Nov 8, 2019, at 4:33 PM, Martin Kodis <martin_kodis@fws.gov> wrote:

No

Sent from my iPhone

On Nov 8, 2019, at 4:29 PM, Melissa Beaumont <melissa_beaumont@fws.gov> wrote:

Did you see this earlier?

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas"
<nicholas_goodwin@ios.doi.gov>
Date: November 8, 2019 at 3:55:00 PM EST
To: Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>
Cc: "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, OCO-Theresa Eisenman <theresa_eisenman@ios.doi.gov>, "Schroeder, Darin" <Darin_Schroeder@ios.doi.gov>, Melissa Brown <melissa_brown@ios.doi.gov>
Subject: CBRA Website Update

Margaret/John/Melissa,

Please update the CBRA website -
- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier

today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.

Thank you,

—

(b) (5)



(b) (5)

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



[<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

From: [Goodwin, Nicholas](#)
To: [Gavin Shire](#)
Cc: [Barbara Wainman](#); [Laury Parramore](#); [Carol Danko](#); [Margaret Everson](#); [Melissa Brown](#); [Schroeder, Darin](#); [OCO-Theresa Eisenman](#); [Matthew Huggler](#)
Subject: Re: CBRA Statement from FWS
Date: Friday, November 8, 2019 7:29:09 PM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)

Appreciate your suggestions, Gavin. Please send the statement before noon today, and let us know if you get any inquiries on this topic, requesting background information or otherwise.

Thank you,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



On Fri, Nov 8, 2019 at 8:33 AM Gavin Shire <gavin_shire@fws.gov> wrote:

+ Matt

We won't be doing any social or proactive media. We will continue to provide background on the program as asked to ensure reporters have their facts straight about CBRA in general (not in relation to this change). If FWS needs to say anything, it should be that this is a legal interpretation of the law by our solicitors that supersedes the previous interpretation in regard to this one aspect of the act. We continue to implement the act in accordance with our mandate to protect important coastal ecosystems. We will not comment on rumor or speculation.

My preference, though, is that we simply direct them to OCO.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
[703-358-2649](tel:703-358-2649) (o)
[703-346-9123](tel:703-346-9123) (c)
gavin_shire@fws.gov

On Nov 8, 2019, at 8:22 AM, Goodwin, Nicholas
<nicholas_goodwin@ios.doi.gov> wrote:

I just spoke with Margaret. I've attached and included all of the information on this to make sure everyone is up to speed.

Any questions, please let me know.

Thanks!

—

Trump Administration Makes It Easier to Dredge Protected Areas to Restore Beaches

<https://www.nytimes.com/2019/11/07/climate/trump-beaches-sand-protected-areas.html>

“The Trump Administration is committed to protecting our coastlines and utilizing our available resources to restore, enhance or stabilize our beaches consistent with the law Congress wrote,” said U.S Secretary David Bernhardt. “Today’s notification clarified our understanding of the crystal clear direction provided by Congress decades ago.”

Hill Press Release: <https://vandrew.house.gov/media/press-releases/van-drew-overcomes-bureaucratic-objections-help-local-governments-cape-may>

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



[<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

On Fri, Nov 8, 2019 at 7:03 AM Goodwin, Nicholas

<nicholas_goodwin@ios.doi.gov> wrote:

Gavin, Barbara, and Laury,

In light of additional media attention on the changes to CBRA implementation, please work on a statement from FWS in support of the changes to CBRA per the Secretary's letter today. Let me know if you recommend this coming from Margaret or someone else. It would be great to have the program lead provide a statement of support.

It would also be great to highlight this on social media, denoting the benefits of this policy change. Please have this ready by noon today.

Thank you,

--

Nick Goodwin

Department of the Interior

(202) 412-2249

<11.04.19 Bernhardt CBRA Response (3) (1).pdf>



From: [Beaumont, Melissa](#)
To: [Shire, Gavin](#)
Cc: [Gary Frazer](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Friday, November 8, 2019 9:14:15 PM
Attachments: [iconfinder youtube-square-shadow-social-media 765073.png](#)

Thanks all!

On Fri, Nov 8, 2019 at 12:26 PM Shire, Gavin <gavin_shire@fws.gov> wrote:

No. All good here.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

On Fri, Nov 8, 2019 at 12:25 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

I just spoke with Gary who has no edits/confirmed it was accurate. Gavin did you have any changes?

On Fri, Nov 8, 2019 at 12:13 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Gavin & Gary,

Below is the updated statement that we need to turn around in 10. Your help is much appreciated!

Melissa

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

From: **John Tanner** <john_tanner@ios.doi.gov>
Date: Fri, Nov 8, 2019 at 12:12 PM
Subject: Re: FOR APPROVAL: CBRA statement
To: <melissa_brown@ios.doi.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to

protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

On Nov 8, 2019, at 11:48 AM, Brown, Melissa <melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA. **Deadline is at noon.** Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior



--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

--

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

Office: 202-208-4299

Cell: 202-856-5205



From: [Beaumont, Melissa](#)
To: [Gavin Shire](#); [Gary Frazer](#)
Subject: Fwd: FOR APPROVAL: CBRA statement
Date: Friday, November 8, 2019 9:24:55 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Gavin & Gary,

Below is the updated statement that we need to turn around in 10. Your help is much appreciated!

Melissa

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

From: **John Tanner** <john_tanner@ios.doi.gov>
Date: Fri, Nov 8, 2019 at 12:12 PM
Subject: Re: FOR APPROVAL: CBRA statement
To: <melissa_brown@ios.doi.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

On Nov 8, 2019, at 11:48 AM, Brown, Melissa <melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA. **Deadline is at noon.** Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary

Office of the Secretary
U.S. Department of the Interior



--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205



From: [Playforth, Taylor](#)
To: [Kodis, Martin](#)
Cc: [Hall, Amanda](#); [Dominic Maione](#); [Melissa Beaumont](#); [Angela Gustavson](#)
Subject: Re: [EXTERNAL] CBRA solicitor's memo
Date: Saturday, November 9, 2019 12:09:53 AM

No, we don't share internal documents; regardless of whether that policy was followed in the past.

To avoid the appearance of hiding the ball we need to follow through on Lora's request for a phone call and as the Secretary said, the FWS website needs to be updated.

In regards to the briefing, I suggest Margaret and Karen Budd-Falen lead the discussion so if we could get that scheduled quickly that would be great.

Thanks, have a great weekend!

On Fri, Nov 8, 2019 at 2:16 PM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi folks,

Any thoughts on the request below? Taylor, you indicated in a separate email that we shouldn't share outside of DOI. I'd note that the previous SOL CBRA memo (from 1994) was readily shared outside the Dept. over the years.

Thank you.

Marty

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

From: **Snyder, Lora** <Lora.Snyder@mail.house.gov>
Date: Fri, Nov 8, 2019 at 2:06 PM
Subject: [EXTERNAL] CBRA solicitor's memo
To: Kodis, Martin <martin_kodis@fws.gov>

I understand there is a new solicitor's memo. Can you please share it with me?

Lora D. Snyder

Staff Director

Subcommittee on Water, Oceans, and Wildlife

House Committee on Natural Resources

Chairman Raúl M. Grijalva ([AZ-3](#))

(202) 225-6065

Connect with the Committee Democrats:

[Website](#) | [Twitter](#) | [Facebook](#) | [Youtube](#)

--

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

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

From: [Martin Kodis](#)
To: [Melissa Beaumont](#)
Cc: [Gavin Shire](#); [Charisa Morris](#)
Subject: Re: CBRA Website Update
Date: Saturday, November 9, 2019 1:55:08 AM

No

Sent from my iPhone

On Nov 8, 2019, at 4:29 PM, Melissa Beaumont <melissa_beaumont@fws.gov> wrote:

Did you see this earlier?

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas" <nicholas_goodwin@ios.doi.gov>
Date: November 8, 2019 at 3:55:00 PM EST
To: Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>
Cc: "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, OCO-Theresa Eisenman <theresa_eisenman@ios.doi.gov>, "Schroeder, Darin" <Darin_Schroeder@ios.doi.gov>, Melissa Brown <melissa_brown@ios.doi.gov>
Subject: CBRA Website Update

Margaret/John/Melissa,

Please update the CBRA website -
- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.


Thank you,

—

(b) (5)



Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249

 [<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

From: [Beaumont, Melissa](#)
To: [Gavin Shire](#); [Gary Frazer](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Saturday, November 9, 2019 2:13:34 AM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)

I just spoke with Gary who has no edits/confirmed it was accurate. Gavin did you have any changes?

On Fri, Nov 8, 2019 at 12:13 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Gavin & Gary,

Below is the updated statement that we need to turn around in 10. Your help is much appreciated!

Melissa

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

From: **John Tanner** <john_tanner@ios.doi.gov>
Date: Fri, Nov 8, 2019 at 12:12 PM
Subject: Re: FOR APPROVAL: CBRA statement
To: <melissa_brown@ios.doi.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

On Nov 8, 2019, at 11:48 AM, Brown, Melissa <melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA. **Deadline is at noon.** Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior



--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205



From: [Melissa Brown](#)
To: melissa_beaumont@fws.gov; john_tanner@ios.doi.gov; [Nicholas Goodwin](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Saturday, November 9, 2019 2:43:18 AM

Adding Nick for awareness. Thanks all! Will send to Gavin for USFWS to send to E&E.

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

Begin forwarded message:

From: "Beaumont, Melissa" <melissa_beaumont@fws.gov>
Date: November 8, 2019 at 12:31:46 PM EST
To: Melissa Brown <melissa_brown@ios.doi.gov>
Cc: John Tanner <john_tanner@ios.doi.gov>
Subject: Re: FOR APPROVAL: CBRA statement

We got the ok from Margaret that this version of the quote is good to go. Thanks!

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects."

On Fri, Nov 8, 2019 at 12:13 PM Melissa Brown <melissa_brown@ios.doi.gov> wrote:

10-4

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

On Nov 8, 2019, at 12:12 PM, John Tanner <john_tanner@ios.doi.gov> wrote:

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.


Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

On Nov 8, 2019, at 11:48 AM, Brown, Melissa
<melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA.
Deadline is at noon. Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--
Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior
 [<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

--
Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Frazer, Gary](#)
To: [Margaret Everson](#)
Subject: Fwd: CBRA Website Update
Date: Saturday, November 9, 2019 3:39:47 AM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)

Margaret -- This is the first I've heard about a request to put this blurb on our CBRA website. I have no one to post this on the website at this time of day. More importantly, I'm a chain-of-command kind of guy and take my direction from you, not OCO.

(b) (5)

I'll work on some revisions over the weekend. Please call me if you want to discuss before Tues morning.

You should also know that OCL wants us to consider the SOL memo as an internal document and not post or release it to the Hill or any outside party. -- GDF

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

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

From: **Martin Kodis** <martin_kodis@fws.gov>
Date: Fri, Nov 8, 2019 at 4:42 PM
Subject: Fwd: CBRA Website Update
To: <gary_frazer@fws.gov>

Any ideas on what to do?

Sent from my iPhone

Begin forwarded message:

From: Melissa Beaumont <melissa_beaumont@fws.gov>
Date: November 8, 2019 at 4:29:31 PM EST
To: Martin Kodis <martin_kodis@fws.gov>, Gavin Shire <gavin_shire@fws.gov>
Cc: Charisa Morris <charisa_morris@fws.gov>
Subject: Fwd: CBRA Website Update

Did you see this earlier?

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas" <nicholas_goodwin@ios.doi.gov>
Date: November 8, 2019 at 3:55:00 PM EST
To: Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>
Cc: "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, OCO-Theresa Eisenman <theresa_eisenman@ios.doi.gov>, "Schroeder, Darin" <Darin_Schroeder@ios.doi.gov>, Melissa Brown <melissa_brown@ios.doi.gov>
Subject: CBRA Website Update

Margaret/John/Melissa,

Please update the CBRA website -
- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.


Thank you,

—

(b) (5)



(b) (5)

A large rectangular area of the document is redacted with a solid grey block. The text "(b) (5)" is visible in the top left corner of this redacted area.

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249





From: [Beaumont, Melissa](#)
To: [Gary Frazer](#); [Nikki Randolph](#); [Donnise Hancock](#)
Subject: Fwd: CBRA memo
Date: Saturday, November 9, 2019 5:12:41 AM

FYI - just sharing that I double checked with OCL and we can close those two letters out.

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

From: **Playforth, Taylor** <taylor_playforth@ios.doi.gov>
Date: Tue, Nov 5, 2019 at 5:36 PM
Subject: Re: CBRA memo
To: Beaumont, Melissa <melissa_beaumont@fws.gov>
Cc: Gustavson, Angela <angela_gustavson@fws.gov>, Amanda Hall <amanda_hall@ios.doi.gov>, Martin Kodis <martin_kodis@fws.gov>

Correct, I'm all set as far as letters go.

On Tue, Nov 5, 2019 at 5:09 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Ok, so to be clear - we will close the routing for both of these and you will send the previous interest letter to Grijalva. Did you need anything else from us on these?

On Tue, Nov 5, 2019 at 5:02 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:
The Secretary's Nov 4th response should cover both of those letters although Grijalva didn't get a "based on your previous interest" response but probably should have. If you can close it out then I can share a copy of the Nov 4 letter with committee staff.

On Tue, Nov 5, 2019 at 4:52 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Awesome, thanks!

There are still two hard copies we are holding in Margaret's office I'm wondering about:

1. DTS 070502 - Grijalva letter to FWS & USGS re sand mining study - my last note on this says OCL may have changes. Do you all have an update on this?
2. DTS 069830 - Van Drew Letter re NJ-09 specific site for sand mining/otherwise protected area question - is this letter covered by the letter to Van Drew or do we need a specific response?

Thank you!
Melissa

On Tue, Nov 5, 2019 at 4:33 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

Yes, that was one of the reasons the Secretary wanted to send the "based on your previous interest" letters to make all the interested offices aware but also to closeout the letters that were sitting open.

I actually gave our correspondence poc (Joe Nevils) the responses I was holding onto earlier today and asked him to use Nov 4th response to close them out. Since I gave them to Joe to close out I no longer have them to reference the specific details of the two letters but if I recall correctly, there was an earlier Van Drew letter and a Rouzer, Graves, et others letter.

On Tue, Nov 5, 2019 at 4:03 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

Now that we have sent these letters to the Hill, can we close out some of the incoming letters on this issue? Can you let me know which ones are done and if there are still some to respond to?

On Tue, Nov 5, 2019 at 3:30 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Hi Taylor,

Thanks for sending us these congressional letters.

We're checking with the CBRA program on when and how we will update our publicly available resources to reflect the new SOL memo.

Angela

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

On Tue, Nov 5, 2019 at 2:29 PM Playforth, Taylor
<taylor_playforth@ios.doi.gov> wrote:

+ Karen and Margaret

In providing the response to Congress, one follow up question I received is when and how FWS will be updating their publically available resources to reflect the updated guidance?

On Tue, Nov 5, 2019 at 2:14 PM Playforth, Taylor
<taylor_playforth@ios.doi.gov> wrote:

Apologies for the delay, sharing the Van Drew, Rouzer, Graves letter and the based on previous interest letters as well.

On Tue, Nov 5, 2019 at 1:51 PM Gustavson, Angela

<angela_gustavson@fws.gov> wrote:

Thanks, Amanda. Our correspondence office was just able to track down copies of this letter so I have it now.

Angela

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

On Tue, Nov 5, 2019 at 1:47 PM Amanda Hall <amanda_hall@ios.doi.gov> wrote:

Looping in Taylor who's been the lead on this effort.

On Nov 5, 2019, at 1:45 PM, Gustavson, Angela
<angela_gustavson@fws.gov> wrote:

Hi Amanda,

We saw there was a letter sent from the Secretary to Rep. Van Drew on November 4 that's shown in this [news release](#) from Rep. Van Drew, but the news release doesn't include the full letter. This is related to the new SOL memo on sand mining in CBRA areas. Do you have a copy of that letter that you can share with us?

Thanks,

Angela

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

On Thu, Oct 31, 2019 at 4:14 PM Martin Kodis

<martin_kodis@fws.gov> wrote:

Ok. Thanks. We will sit tight.

Sent from my iPhone

On Oct 31, 2019, at 4:13 PM, Hall, Amanda
<amanda_hall@ios.doi.gov> wrote:

Hello - Yes OCL will take care of Hill outreach on this. I'll let you know who we reach out to when that's more solidified. Thank you for offering to help!

Best,

Amanda

On Thu, Oct 31, 2019 at 2:23 PM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Amanda,

I hope your day is going well.

I understand that there is a new SOL memo on sand mining in CBRA areas. Is OCL planning to do any Hill notification on this change? Can you please confirm and also let me know if there's anything we can do to help you on this. We'd appreciate to know, for our awareness, which offices are contacted if OCL is doing so.

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

--

Amanda Hall
Advisor, Office of Congressional and

Legislative Affairs
U.S. Department of the Interior

*NOTE: Every email I send or receive is
subject to release under the Freedom of
Information Act.*

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

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Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

--

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--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Melissa Beaumont](#)
To: [Martin Kodis](#); [Gavin Shire](#)
Cc: [Charisa Morris](#)
Subject: Fwd: CBRA Website Update
Date: Saturday, November 9, 2019 11:35:15 AM
Attachments: [iconfinder youtube-square-shadow-social-media 765073.png](#)

Did you see this earlier?

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas" <nicholas_goodwin@ios.doi.gov>
Date: November 8, 2019 at 3:55:00 PM EST
To: Margaret Everson <margaret_e_everson@fws.gov>, John Tanner <john_tanner@ios.doi.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>
Cc: "Budd-Falen, Karen" <karen.budd-falen@sol.doi.gov>, OCO-Theresa Eisenman <theresa_eisenman@ios.doi.gov>, "Schroeder, Darin" <Darin_Schroeder@ios.doi.gov>, Melissa Brown <melissa_brown@ios.doi.gov>
Subject: CBRA Website Update

Margaret/John/Melissa,

Please update the CBRA website -- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.


Thank you,

—

(b) (5)



(b) (5)

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Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249





From: [Mills, Katie](#)
To: [Gustavson, Angela](#)
Cc: [Playforth, Taylor](#); [Amanda Hall](#); [Martin Kodis](#); [Melissa Beaumont](#); [Budd-Falen, Karen](#); [Margaret Everson](#)
Subject: Re: CBRA memo
Date: Saturday, November 9, 2019 2:19:01 PM

Thank you, Angela. Once you speak with the CBRA program, can you let us know a timeline of when the website and publicly available resources are expected to be updated? Thank you!

On Tue, Nov 5, 2019 at 3:30 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:
Hi Taylor,

Thanks for sending us these congressional letters.

We're checking with the CBRA program on when and how we will update our publicly available resources to reflect the new SOL memo.

Angela

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

On Tue, Nov 5, 2019 at 2:29 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:
+ Karen and Margaret

In providing the response to Congress, one follow up question I received is when and how FWS will be updating their publically available resources to reflect the updated guidance?

On Tue, Nov 5, 2019 at 2:14 PM Playforth, Taylor <taylor_playforth@ios.doi.gov> wrote:

Apologies for the delay, sharing the Van Drew, Rouzer, Graves letter and the based on previous interest letters as well.

On Tue, Nov 5, 2019 at 1:51 PM Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Thanks, Amanda. Our correspondence office was just able to track down copies of this letter so I have it now.

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

On Tue, Nov 5, 2019 at 1:47 PM Amanda Hall <amanda_hall@ios.doi.gov> wrote:
Looping in Taylor who's been the lead on this effort.

On Nov 5, 2019, at 1:45 PM, Gustavson, Angela <angela_gustavson@fws.gov> wrote:

Hi Amanda,

We saw there was a letter sent from the Secretary to Rep. Van Drew on November 4 that's shown in this [news release](#) from Rep. Van Drew, but the news release doesn't include the full letter. This is related to the new SOL memo on sand mining in CBRA areas. Do you have a copy of that letter that you can share with us?

Thanks,

Angela

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

On Thu, Oct 31, 2019 at 4:14 PM Martin Kodis
<martin_kodis@fws.gov> wrote:

Ok. Thanks. We will sit tight.

Sent from my iPhone

On Oct 31, 2019, at 4:13 PM, Hall, Amanda
<amanda_hall@ios.doi.gov> wrote:

Hello - Yes OCL will take care of Hill outreach on this.
I'll let you know who we reach out to when that's more solidified. Thank you for offering to help!

Best,

Amanda

On Thu, Oct 31, 2019 at 2:23 PM Kodis, Martin
<martin_kodis@fws.gov> wrote:

Hi Amanda,

I hope your day is going well.

I understand that there is a new SOL memo on sand mining in CBRA areas. Is OCL planning to do any Hill notification on this change? Can you please confirm and also let me know if there's anything we can do to help you on this. We'd appreciate to know, for our awareness, which offices are contacted if OCL is doing so.

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

--

Amanda Hall
Advisor, Office of Congressional and Legislative
Affairs
U.S. Department of the Interior

*NOTE: Every email I send or receive is subject to
release under the Freedom of Information Act.*

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

Taylor Playforth
Senior Advisor
US Department of the Interior
Office of Congressional & Legislative Affairs
(202) 795-0977

--

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

From: [Goodwin, Nicholas](#)
To: [Margaret Everson](#); [John Tanner](#); [Melissa Beaumont](#)
Cc: [Budd-Falen, Karen](#); [OCO-Theresa Eisenman](#); [Schroeder, Darin](#); [Melissa Brown](#)
Subject: CBRA Website Update
Date: Saturday, November 9, 2019 7:35:34 PM
Attachments: [iconfinder youtube-square-shadow-social-media 765073.png](#)

Margaret/John/Melissa,

Please update the CBRA website -- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.

Thank you,

—

(b) (5)



Nick Goodwin
Communications Director

Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249





From: [Melissa Brown](#)
To: gavin_shire@fws.gov
Cc: melissa_beaumont@fws.gov; [Nicholas Goodwin](#); john_tanner@ios.doi.gov
Subject: CBRA statement
Date: Saturday, November 9, 2019 11:14:33 PM

Hi Gavin,

As discussed on the phone earlier, please see Margaret's approved statement below to be used for any inquiries regarding CBRA. This is also to be sent to E&E News regarding the original inquiry.

Please cc interior_press@ios.doi.gov on all inquiries for our awareness.

"The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." — **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

Begin forwarded message:

From: "Beaumont, Melissa" <melissa_beaumont@fws.gov>
Date: November 8, 2019 at 12:31:46 PM EST
To: Melissa Brown <melissa_brown@ios.doi.gov>
Cc: John Tanner <john_tanner@ios.doi.gov>
Subject: Re: FOR APPROVAL: CBRA statement

We got the ok from Margaret that this version of the quote is good to go. Thanks!

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects."

From: [Brown, Melissa](#)
To: [Margaret Everson](#); [John Tanner](#)
Cc: [Melissa Beaumont](#); [Goodwin, Nicholas](#)
Subject: FOR APPROVAL: CBRA statement
Date: Sunday, November 10, 2019 1:21:09 AM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Margaret, please see below for statement regarding CBRA. **Deadline is at noon.** Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior





From: [Taylor Playforth](#)
To: [Beaumont, Melissa](#)
Cc: [Katie Mills](#); [Amanda Hall](#)
Subject: Re: Scanned CBRA doc2
Date: Sunday, November 10, 2019 6:01:50 PM

Awesome that should satisfy their follow ups.

Sent from my iPhone

On Nov 5, 2019, at 6:47 PM, Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:

FYI - Margaret just sent this out.

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

From: **Everson, Margaret** <margaret_e_everson@fws.gov>
Date: Tue, Nov 5, 2019 at 6:43 PM
Subject: Fwd: Scanned CBRA doc2
To: FWS Directorate & Deputies <fwsdirectanddep@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Morris, Charisa <charisa_morris@fws.gov>, Kodis, Martin <martin_kodis@fws.gov>

| FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best
Margaret

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

<CBRA docs2.pdf>

From: [Goodwin, Nicholas](#)
To: [Melissa Brown](#)
Cc: [Melissa Beaumont](#); [John Tanner](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Sunday, November 10, 2019 8:01:36 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Thank you, both. We appreciate the support.

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



On Fri, Nov 8, 2019 at 12:34 PM Melissa Brown <melissa_brown@ios.doi.gov> wrote:
Adding Nick for awareness. Thanks all! Will send to Gavin for USFWS to send to E&E.

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

Begin forwarded message:

From: "Beaumont, Melissa" <melissa_beaumont@fws.gov>
Date: November 8, 2019 at 12:31:46 PM EST
To: Melissa Brown <melissa_brown@ios.doi.gov>
Cc: John Tanner <john_tanner@ios.doi.gov>
Subject: Re: **FOR APPROVAL: CBRA statement**

We got the ok from Margaret that this version of the quote is good to go.
Thanks!

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects."

On Fri, Nov 8, 2019 at 12:13 PM Melissa Brown

<melissa_brown@ios.doi.gov> wrote:

10-4

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

On Nov 8, 2019, at 12:12 PM, John Tanner <john_tanner@ios.doi.gov> wrote:

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior


On Nov 8, 2019, at 11:48 AM, Brown, Melissa
<melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA.
Deadline is at noon. Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

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--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205



From: [Beaumont, Melissa](#)
To: [Melissa Brown](#)
Cc: [John Tanner](#)
Subject: Re: FOR APPROVAL: CBRA statement
Date: Monday, November 11, 2019 6:19:01 PM

We got the ok from Margaret that this version of the quote is good to go. Thanks!

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects."

On Fri, Nov 8, 2019 at 12:13 PM Melissa Brown <melissa_brown@ios.doi.gov> wrote:
10-4

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

On Nov 8, 2019, at 12:12 PM, John Tanner <john_tanner@ios.doi.gov> wrote:

Melissa Brown,

We are making some edits now. Should be done in 10 minutes.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. Our guidance to the Army Corps of Engineers is consistent with the purposes and intent of the Act in order to allow for local communities to conduct beach renourishment projects." --

John Tanner
Principal Deputy Assistant Secretary
Fish and Wildlife and Parks
U.S. Department of the Interior

On Nov 8, 2019, at 11:48 AM, Brown, Melissa <melissa_brown@ios.doi.gov> wrote:

Margaret, please see below for statement regarding CBRA. **Deadline is at noon.**
Please let me know if you have any objections or edits.

Suggested statement: "The U.S. Fish and Wildlife Service is committed to protecting coastal environments. This decision restores the policy back to the original intent of Congress in order to allow for local communities to conduct beach renourishment projects, while minimizing wasteful expenditures and protecting our natural resources." -- **U.S. Fish and Wildlife Service, Principal Deputy Acting as the Director Margaret Everson**

--

Melissa Brown
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior

 [<iconfinder_youtube-square-shadow-social-media_765073.png>](#)

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4299
Cell: 202-856-5205

From: [Goodwin, Nicholas](#)
To: [Margaret Everson](#); [John Tanner](#); [Melissa Beaumont](#)
Cc: [Budd-Falen, Karen](#); [OCO-Theresa Eisenman](#); [Schroeder, Darin](#); [Melissa Brown](#)
Subject: Re: CBRA Website Update
Date: Tuesday, November 12, 2019 10:48:46 AM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

All--

Re-upping this as I talked to Margaret on Friday, and she mentioned getting this (or a similar message) posted today. Let us know when it is up.

Thank you,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



On Fri, Nov 8, 2019 at 3:55 PM Goodwin, Nicholas <nicholas_goodwin@ios.doi.gov> wrote:
Margaret/John/Melissa,

Please update the CBRA website -- <https://www.fws.gov/CBRA/> - Hot Topics section to include the blurb below. This was requested of FWS comms and CBRA staff earlier today to be completed, yet has not been done. The language below has been cleared for SOL. Please let me know when it is posted online today before COB.

Any questions, please let me know.

Thank you,

—

(b) (5)

A large grey rectangular redaction box covers the bottom half of the email body, starting below the signature line and extending to the bottom of the page. The text "(b) (5)" is written in red at the top left of this redacted area.

(b) (5)

[Redacted]

[Redacted]

[Redacted]

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249





From: [Kodis, Martin](#)
To: [Melissa Beaumont](#)
Subject: Fwd: CBRA statement
Date: Tuesday, November 12, 2019 11:32:42 AM

here it is

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

From: **Shire, Gavin** <gavin_shire@fws.gov>
Date: Fri, Nov 8, 2019 at 11:39 AM
Subject: CBRA statement
To: Martin Kodis <martin_kodis@fws.gov>
Cc: Angela Gustavson <angela_gustavson@fws.gov>

Approved by Gary and OCO and sent to E&E:

"The Service sought legal advice from the Department of the Interior Solicitor's Office on a specific question regarding beach nourishment and stabilization projects as they relate to the Coastal Barrier Resources Act. They have provided us with a revised interpretation of the law that we will follow and advise our federal agency partners accordingly as we provide assistance on such projects in the future."

(b) (5)

I've been unable to reach her, however.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

--

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

5275 Leesburg Pike
Falls Church, VA 22041

703-358-2241 ph

703-358-2245 fax

From: [Wainman, Barbara](#)
To: [Kodis, Martin](#)
Cc: [Margaret Everson](#); [Matthew Huggler](#); [Melissa Beaumont](#); [Gavin Shire](#); [Gary Frazer](#)
Subject: Re: CBRA hot topic updated
Date: Thursday, November 14, 2019 11:44:26 AM

gavin please let Nick know

Barbara W. Wainman
Assistant Director, External Affairs
US Fish and Wildlife Service
(202) 208-5256 (office)
(571) 471-4159 (cell)

On Thu, Nov 14, 2019 at 9:44 AM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Margaret, et al,

The CBRA website has been updated with the information on sand mining for beach nourishment. Per our discussion Friday Margaret - Gary's team ran the words through SOL to ensure consistency/accuracy. SOL completed review COB yesterday and it got posted this am.

Thank you.

Marty

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

From: Niemi, Katie <katie_niemi@fws.gov>
Date: Thu, Nov 14, 2019 at 9:15 AM
Subject: CBRA hot topic updated
To: Frazer, Gary <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Romanik, Peg <peg.romanik@sol.doi.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>, Michelle Shaughnessy <michelle_shaughnessy@fws.gov>, Gavin Shire <gavin_shire@fws.gov>, Wright, Dana <dana_wright@fws.gov>

Hi Folks,

The CBRA website has been updated with the new hot topic on beach nourishment: <https://www.fws.gov/cbra/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES

5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

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

5275 Leesburg Pike
Falls Church, VA 22041

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

From: [Margaret Everson](#)
To: [Kodis, Martin](#)
Cc: [Wainman, Barbara](#); [Matthew Huggler](#); [Melissa Beaumont](#); [Gavin Shire](#); [Gary Frazer](#)
Subject: Re: CBRA hot topic updated
Date: Thursday, November 14, 2019 2:18:38 PM

Thank you

Sent from my iPhone

On Nov 14, 2019, at 9:44 AM, Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi Margaret, et al,

The CBRA website has been updated with the information on sand mining for beach nourishment. Per our discussion Friday Margaret - Gary's team ran the words through SOL to ensure consistency/accuracy. SOL completed review COB yesterday and it got posted this am.

Thank you.

Marty

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

From: Niemi, Katie <katie_niemi@fws.gov>
Date: Thu, Nov 14, 2019 at 9:15 AM
Subject: CBRA hot topic updated
To: Frazer, Gary <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Romanik, Peg <peg.romanik@sol.doi.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>, Michelle Shaughnessy <michelle_shaughnessy@fws.gov>, Gavin Shire <gavin_shire@fws.gov>, Wright, Dana <dana_wright@fws.gov>

Hi Folks,

The CBRA website has been updated with the new hot topic on beach nourishment: <https://www.fws.gov/cbra/>

Katie

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

--

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

5275 Leesburg Pike
Falls Church, VA 22041

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

From: [Goodwin, Nicholas](#)
To: [Margaret Everson](#); [Skipwith, Aurelia](#)
Cc: [Interior Press](#)
Subject: Re: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS
Date: Tuesday, January 7, 2020 12:40:30 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Margaret and Aurelia,

Can either of you do this interview, highlighting the Secretary's and FWS' action + the benefits for the decision? Please let me know today, so we can coordinate with FWS comms.

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



On Tue, Jan 7, 2020 at 12:34 PM Trista Talton <tktalton@gmail.com> wrote:

Good afternoon,

I write for a North Carolina-based publication called *Coastal Review Online* and I'm working on a story about what changes can be expected following DOI's reversal of FWS's 1992 interpretation of where sand dredged within a CBRS may be placed. I'm requesting an interview with someone in DOI who may be able to address my questions, including:

1. Will beach nourishment sand sources now be allowed to be identified in CBRA zones?
2. Does the reversal mean that beach towns will be allowed to apply for federal funding to pay for any portion of sand re-nourishment projects that use sand from CBRA zones?

My deadline is close of business Thursday, Jan. 9.

Thank you for your time.

Regards,

--

Trista Talton
Coastal Review Online
Cell: (910) 388-5580



From: [Margaret Everson](#)
To: [Barbara Wainman](#)
Cc: [Aurelia Skipwith](#)
Subject: Fwd: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS
Date: Tuesday, January 7, 2020 12:54:28 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Let's discuss

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas" <nicholas_goodwin@ios.doi.gov>
Date: January 7, 2020 at 12:40:07 PM EST
To: Margaret Everson <margaret_e_everson@fws.gov>, "Skipwith, Aurelia" <aurelia_skipwith@ios.doi.gov>
Cc: Interior Press <interior_press@ios.doi.gov>
Subject: Re: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS

Margaret and Aurelia,

Can either of you do this interview, highlighting the Secretary's and FWS' action + the benefits for the decision? Please let me know today, so we can coordinate with FWS comms.

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



On Tue, Jan 7, 2020 at 12:34 PM Trista Talton <tktalton@gmail.com> wrote:
Good afternoon,

I write for a North Carolina-based publication called *Coastal Review Online* and I'm working on a story about what changes can be expected following DOI's reversal of FWS's 1992 interpretation of where sand dredged within a CBRS may be placed. I'm requesting an interview with someone in DOI who may be

able to address my questions, including:

1. Will beach nourishment sand sources now be allowed to be identified in CBRA zones?
2. Does the reversal mean that beach towns will be allowed to apply for federal funding to pay for any portion of sand re-nourishment projects that use sand from CBRA zones?

My deadline is close of business Thursday, Jan. 9.

Thank you for your time.

Regards,

--

Trista Talton
Coastal Review Online
Cell: (910) 388-5580



From: [Barbara Wainman](#)
To: [Margaret Everson](#)
Subject: Re: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS
Date: Tuesday, January 7, 2020 1:37:40 PM
Attachments: [iconfinder_youtube-square-shadow-social-media_765073.png](#)

Call me if we need to talk today

Sent from my iPhone

On Jan 7, 2020, at 12:54 PM, Margaret Everson <margaret_e_everson@fws.gov> wrote:

Let's discuss

Sent from my iPhone

Begin forwarded message:

From: "Goodwin, Nicholas" <nicholas_goodwin@ios.doi.gov>
Date: January 7, 2020 at 12:40:07 PM EST
To: Margaret Everson <margaret_e_everson@fws.gov>, "Skipwith, Aurelia" <aurelia_skipwith@ios.doi.gov>
Cc: Interior Press <interior_press@ios.doi.gov>
Subject: Re: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS

Margaret and Aurelia,

Can either of you do this interview, highlighting the Secretary's and FWS' action + the benefits for the decision? Please let me know today, so we can coordinate with FWS comms.

Thanks,

Nick Goodwin
Communications Director
Office of the Secretary
U.S. Department of the Interior
#: (202) 412-2249



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Cell: (910) 388-5580



From: [Skipwith, Aurelia](#)
To: [Goodwin, Nicholas](#)
Cc: [Margaret Everson](#); [Interior Press](#)
Subject: Re: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS
Date: Tuesday, January 7, 2020 5:04:08 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Hi Nick,

Thanks for passing this along. I will let you know tomorrow morning who will be available for the interview. Thank you.

Aurelia Skipwith

Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of the Interior
1849 C Street, NW, Room 3148
Washington, DC 20240
(202) 208-5837



NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

On Tue, Jan 7, 2020 at 12:40 PM Goodwin, Nicholas <nicholas_goodwin@ios.doi.gov> wrote:

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Trista Talton
Coastal Review Online
Cell: (910) 388-5580



From: [Wainman, Barbara](#)
To: [Margaret Everson](#)
Subject: CBRA
Date: Wednesday, January 8, 2020 10:10:46 AM

“The Trump Administration is committed to protecting our coastlines and utilizing our available resources to restore, enhance or stabilize our beaches consistent with the law Congress wrote,” said U.S Secretary David Bernhardt. “Today’s notification clarified our understanding of the crystal clear direction provided by Congress decades ago.”

This was in a Van Drew press release and we have no other talking points on this. Can we talk with Gary about it there appear to be some other issues that we should discuss before we do this interview.

Barbara W. Wainman
Assistant Director, External Affairs
US Fish and Wildlife Service
(202) 208-5256 (office)
(571) 471-4159 (cell)

From: [Frazer, Gary](#)
To: [Shaughnessy, Michelle](#)
Cc: [Gina Shultz](#); [Martha Balis Larsen](#); [Margaret Everson](#); [Barbara Wainman](#); [Gavin Shire](#)
Subject: Fwd: Press Inquiry — DOI's reversal of FWS interpretation of sand within CBRS
Date: Wednesday, January 8, 2020 5:57:18 PM
Attachments: [iconfinder youtube-square-shadow-social-media_765073.png](#)

Aurelia may give an interview with this publication, and we just briefed her on the complexities. Would you get Gavin 2 or 3 real world examples of how the requirements to satisfy the purposes of the Act and meet the standards for the nonstructural shoreline stabilization exemption may still limit the ability to use sand derived from CBRS units for federal beach nourishment/storm damage reduction projects, i.e., the project incorporates groins or jetties, the rebuilt dunes include geocores or are constructed to be higher and more stable than a natural system, the borrow site provides important habitat or may be destabilized, etc? Just borrow from the draft letter to the Corps.

The point is to emphasize that those other statutory requirement remain and to illustrate the kinds of considerations that the Corps or any other federal construction or funding agency will have to consider in establishing CBRA compliance. -- GDF

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

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

From: Martin Kodis <martin_kodis@fws.gov>
Date: Wed, Jan 8, 2020 at 8:52 AM
Subject: Press Inquiry — DOI's reversal of FWS interpretation of sand within CBRS
To: <gary_frazer@fws.gov>
Cc: <barbara_wainman@fws.gov>, <gavin_shire@fws.gov>

Gary FYI. I don't think anyone has gotten back to Nick yet and imagine this will be discussed in the hallway this am.

Marty

Begin forwarded message:

From: Margaret Everson <margaret_e_everson@fws.gov>
Date: January 7, 2020 at 12:54:19 PM EST
To: Barbara Wainman <barbara_wainman@fws.gov>
Cc: Aurelia Skipwith
<aurelia_skipwibarbara_wainman@fws.govth@ios.doi.gov>
Subject: Fwd: [EXTERNAL] DOI's reversal of FWS interpretation of sand within CBRS

Let's discuss

Sent from my iPhone

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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.

Founded 1850

BROOKLYN

LONG ISLAND

MANHATTAN

WASHINGTON, D.C.

ALBANY

NEW JERSEY

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

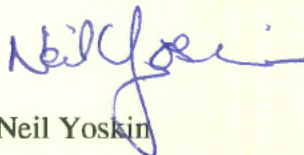
² The original project specifications for use of the Hereford Inlet Borrow Area w343 limited to the construction of Stone Harbor Point. Townsends Inlet was to be used for periodic nourishment. We are advised by the USACE that it was during the design phase of the initial construction that the use of 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.

CULLENandDYKMANLLP

Eric Schrading
Page 5
July 12, 2019

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*)



USFWS INFORMATION MEMORANDUM



DATE: July 30, 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, and Rep. Van Drew sent a letter to the Service regarding the Hereford Inlet, NJ borrow site in March 2019 (DCN 069830 – response pending clearance).

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

Congress of the United States
Washington, DC 20515

June 20, 2018

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

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

Dear Acting Director Sheehan:

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

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

¹ S. Rep. No. 97-419, at 2.

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

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

Thank you for your consideration.

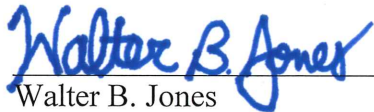
Respectfully,



Garret Graves
Member of Congress



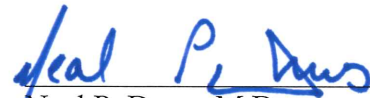
Doug Lamborn
Member of Congress



Walter B. Jones
Member of Congress



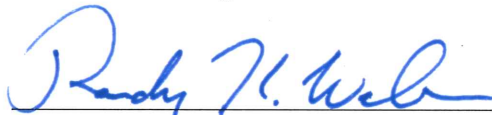
Frank A. LoBiondo
Member of Congress



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



David Rouzer
Member of Congress



Randy K. Weber
Member of Congress

Enclosures

QUESTIONS

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

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



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



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

DEC 21 2018

The Honorable 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

From: [BalisLarsen, Martha](#)
To: [Beaumont, Melissa M](#)
Cc: [Wright, Dana K](#); [Niemi, Katie](#); [Frazer, Gary D](#); [Shultz, Gina](#)
Subject: Fwd: High Priority-please review sand mining IM
Date: Tuesday, July 30, 2019 2:15:39 PM
Attachments: [Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Attachment 3 - Letter from Attorney for NJ Communities.pdf](#)
[CBRA Info Memo on Sand Mining 07302019.docx](#)
[Attachment 2 - Graves et al Incoming Letter and Response Letter.PDF](#)
Importance: High

Melissa, per your request to Gary Frazer, attached is an updated briefing paper on sand mining from within CBRA units that Margaret requested. Please let us know if you have any questions or need additional information.

Martha

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,

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Thanks,
Melissa

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Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior

Office: 202-208-4545
Desk: 202-208-4299

From: [Beaumont, Melissa M](#)
To: [Wright, Dana K](#)
Cc: [BalisLarsen, Martha](#); [Niemi, Katie](#); [Frazer, Gary D](#); [Shultz, Gina](#)
Subject: Re: High Priority-please review sand mining IM
Date: Tuesday, July 30, 2019 3:18:40 PM
Attachments: [CBRA Info Memo on Sand Mining 07302019 v2.docx](#)
Importance: High

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:)

On Tue, Jul 30, 2019 at 2:55 PM Wright, Dana <dana_wright@fws.gov> wrote:

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I've added the exemptions to the first section. The revised version is attached.

There are Corps projects in North Carolina that folks have been asking about. The projects are not exactly restoration, but two separate periodic beach renourishment efforts that are part of coastal storm risk management projects. The projects are mentioned under section III in the second paragraph. These projects are in Representative Rouzer's district (Rep. Rouzer is also mentioned elsewhere in the IM).

Please let me know if you have any further questions,

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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Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
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Melissa

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Melissa Beaumont
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--

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--

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service

U.S. Department of the Interior

Office: 202-208-4299

Cell: 202-856-5205



USFWS INFORMATION MEMORANDUM



DATE: July 30, 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). The administrative authority of the Service to make changes to the CBRS boundaries is limited to changes made as a result of natural forces, voluntary additions by property owners, and additions of excess property to the CBRS. Aside from these exceptions, only legislation enacted by Congress can modify the CBRS maps.

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

Commented [BMM1]: Are these exceptions to federal expenditures able to be briefly mentioned/explained?

DELIBERATIVE-DRAFT-DO NOT DISCLOSE

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, and Rep. Van Drew sent a letter to the Service regarding the Hereford Inlet, NJ borrow site in March 2019 (DCN 069830 – response pending clearance).

DELIBERATIVE-DRAFT-DO NOT DISCLOSE

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.

Commented [BMM2]: Is the Corps officially consulting with us on these project or it sounds like they have decided that they would require an exemption from Congress themselves?

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

From: [Wright, Dana K](#)
To: [Beaumont, Melissa M](#)
Cc: [BalisLarsen, Martha](#); [Niemi, Katie](#); [Frazer, Gary D](#); [Shultz, Gina](#)
Subject: Re: High Priority-please review sand mining IM
Date: Wednesday, July 31, 2019 8:34:31 AM
Importance: High

Hi Melissa,

The Corps is not officially consulting with the Service under CBRA on the two North Carolina projects. A CBRA consultation for one of the borrow sites was completed in the late 1990's, and the Service indicated at that time that use of the borrow site was not permitted under CBRA. Our interpretation of CBRA on this matter has been upheld consistently for the last 25 years, and by now is pretty well known in the affected Corps District offices and also the Corps' Office of the Chief Counsel. It's possible that they are not consulting because they know what our position is and don't want to spend time on any more back and forth.

The Service has no regulatory authority over CBRA, and if the Corps truly disagreed with our position and felt that our interpretation of the statute was incorrect, they could go ahead and do the project using the CBRA borrow sites. The Corps' Wilmington, NC District did take that position years ago (which is why they have historically used some of the NC borrow sites), but has since indicated that they are no longer willing to "agree to disagree" and will stop using the borrow sites unless Congress provides a legislative exemption.

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, Jul 30, 2019 at 5:22 PM Beaumont, Melissa <melissa_beaumont@fws.gov> wrote:
Thanks Martha, that sounds good to me. I'll wait to hear back from Martha before moving forward.

On Tue, Jul 30, 2019 at 5:12 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

Melissa, the exceptions are somewhat wordy so it may be easiest if we attached the information from our website. It provides the exact language. Please see <https://www.fws.gov/cbra/Limitations-and-Exceptions.html>.

Dana will get back to you in the morning regarding your question on the NC Corps projects.

Martha

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

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Date: Wed, Jul 24, 2019 at 7:31 PM
Subject: CBRA Memo
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From: [Frazer, Gary D](#)
To: [Niemi, Katie](#)
Cc: [Shultz, Gina](#); [Shaughnessy, Michelle](#); [BalisLarsen, Martha](#); [Phinney, Jonathan T](#); [Wright, Dana K](#)
Subject: Re: CBRA sand mining options paper
Date: Wednesday, October 16, 2019 6:22:12 PM
Attachments: [20191016 Decision Briefing Doc - CBRA Sand Mining.docx](#)

Excellent work. Here's what I sent forward (with the 1994 Opinion and the 1995 A/S-FWP letter attached). Just made a few tweaks; nothing substantive. -- GDF

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

On Wed, Oct 16, 2019 at 3:19 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Gary,

Per your request, attached is a CBRA sand mining options paper in Google Docs. We shared the file with the region, NJ field office, CLA and SOL for their feedback. The information in the "Constraints on Secretary or Deputy Secretary for Action" is largely copied from the draft options paper prepared by Linus a few months ago. We left in the comments/questions from Katie Mills. I spoke with Linus today and he confirmed that those comments/questions have not yet been resolved. Please let me know if you need anything else from us.

https://docs.google.com/document/d/1h06H3hHvRHZ0ZP_bE3JzMbaOK8EAzS7vjsXf6DcG1Bo/edit?usp=sharing

Thanks!
Katie

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

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 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. 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 past 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.

B5-ACP-DPP

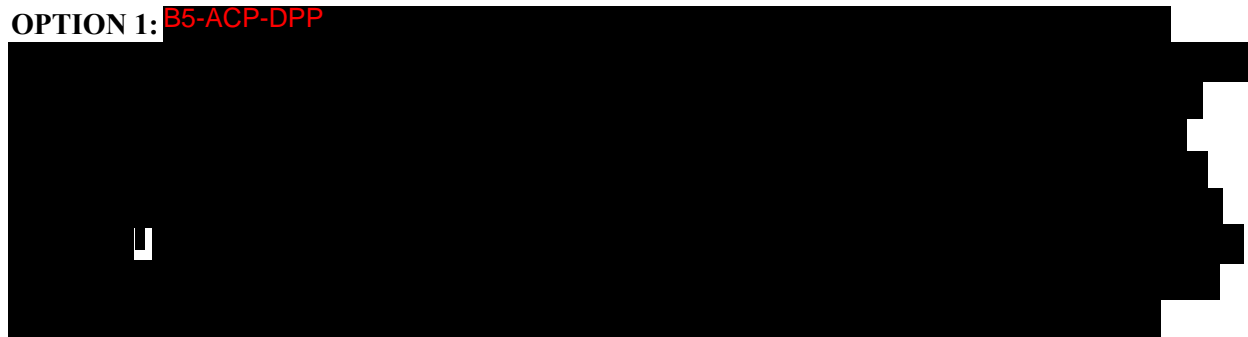


In 2016, the Borough of Avalon, NJ filed suit against the Corps and the Service for violation of the Administrative Procedure Act, alleging an arbitrary and capricious interpretation of CBRA (consistent

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: B5-ACP-DPP



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: B5-ACP-DPP

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 local communities (and their members of Congress) and the State of New Jersey would support this option, as it would open up potential sand borrow areas to sand mining using federal funds. It is unclear whether the Corps would support this option, although it would make it easier for them to complete certain beach nourishment projects.

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. These groups would likely oppose Option 2 and could pursue litigation against the Service.

Approval - _____

Attachment

From: [Bohn, Cynthia](#)
To: [Wright, Dana K](#); [Niemi, Katie](#)
Subject: Fwd: CBRA: SOL opinion on utilizing sand
Date: Friday, November 15, 2019 11:47:20 AM
Importance: High

sent to R4...

Cynthia Bohn
Regional Coastal Program Coordinator
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----- Forwarded message -----

From: **Bohn, Cynthia** <cynthia_bohn@fws.gov>
Date: Fri, Nov 15, 2019 at 11:46 AM
Subject: Re: CBRA: SOL opinion on utilizing sand
To: Valenta, Aaron <aaron_valenta@fws.gov>, Stephen Ricks <stephen_ricks@fws.gov>, Cary Norquist <cary_norquist@fws.gov>, Joseph Ranson <joseph_ranson@fws.gov>, Brad Rieck <Brad_Rieck@fws.gov>, Sean Blomquist <sean_blomquist@fws.gov>, Jeff Powell <jeff_powell@fws.gov>, Bill Pearson <bill_pearson@fws.gov>, Jay Herrington <jay_herrington@fws.gov>, nikki lamp <nikki_colangelo@fws.gov>, Heath Rauschenberger <heath_rauschenberger@fws.gov>, Roxanna Hinzman <Roxanna_Hinzman@fws.gov>, Donald Imm <donald_imm@fws.gov>, Robin Goodloe <robin_goodloe@fws.gov>, Thomas McCoy <thomas_mccoy@fws.gov>, Pete Benjamin <Pete_Benjamin@fws.gov>, Tom Augspurger <tom_augspurger@fws.gov>, mark_caldwell <Mark_Caldwell@fws.gov>, Amy Trahan <amy_trahan@fws.gov>, Bruce Porter <bruce_porter@fws.gov>, channing_staubin@fws.gov <channing_staubin@fws.gov>, David Felder <david_felder@fws.gov>, John Savell <john_savell@fws.gov>, Christopher Hernandez <christopher_hernandez@fws.gov>, Cynthia Bohn <cynthia_bohn@fws.gov>, Emily Jernigan <emily_wells@fws.gov>, Felix Lopez <felix_lopez@fws.gov>, Gianfranco Basili <gianfranco_basili@fws.gov>, Jeffrey Howe <jeffrey_howe@fws.gov>, John Ellis <john_ellis@fws.gov>, Joshua Marceaux <joshua_marceaux@fws.gov>, Lydia Ambrose <lydia_ambrose@fws.gov>, Matthias Laschet <matthias_laschet@fws.gov>, melody ray-culp <Melody_Ray-Culp@fws.gov>, Paul Necaise <Paul_Necaise@fws.gov>, Shana DiPalma <shana_dipalma@fws.gov>, Shawn Christopherson <shawn_christopherson@fws.gov>, Zakia Williams <zakia_williams@fws.gov>
Cc: Michelle Eversen <michelle_eversen@fws.gov>, Jack Arnold <Jack_Arnold@fws.gov>,

Jeff Weller <Jeff_Weller@fws.gov>, aaron valenta <Aaron_Valenta@fws.gov>, Larry Williams <larry_williams@fws.gov>, Katie Niemi <katie_niemi@fws.gov>, Jon Hemming <jon_hemming@fws.gov>, David Horning <david_horning@fws.gov>

Hello CBRA folks and field supervisors,

Per my discussion with Acting ARD 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 memo 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 SOL has advised that we not release the 10/30/2019 Solicitor's memo and keep it "close hold" until further notice.**
- Until we have further guidance from HQ, please do not respond to any CBRA consultations without coordinating with me. 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.

Cindy

Cynthia Bohn
Regional Coastal Program Coordinator
Coastal Barrier Resources Act Regional Coordinator

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On Wed, Nov 6, 2019 at 12:58 PM Valenta, Aaron <aaron_valenta@fws.gov> wrote:

FYI. New SOL opinion and DOI guidance on ability to remove sand from a CBRA unit for beach nourishment elsewhere. Effective immediately.

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: "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.
Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take

the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing audience on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best
Margaret

From: [Niemi, Katie](#)
To: [Phinney, Jonathan T](#)
Cc: [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#); [Wright, Dana K](#)
Subject: Re: CBRA: SOL opinion on utilizing sand
Date: Monday, November 18, 2019 12:38:05 PM
Importance: High

We hope to have answers to our questions back from SOL this week.

Katie

On Mon, Nov 18, 2019 at 12:30 PM Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:
Katie,

I would agree that a meeting with the Corp at a national level on the sand mining issue would be beneficial.

When do you think the Solicitors will be able to answer your questions so guidance can start to be developed?

JPh

Jph

On Mon, Nov 18, 2019 at 11:19 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI, see below for contact between the Wilmington Corps and our NC field office. I think it would be good to have coordination between the Corps and the Service at the national level so we understand how they plan to interpret the new SOL memo and they understand that we plan to develop guidance.

Katie

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

From: **Matthews, Kathryn** <kathryn_matthews@fws.gov>
Date: Mon, Nov 18, 2019 at 10:51 AM
Subject: Re: CBRA: SOL opinion on utilizing sand
To: Ellis, John <john_ellis@fws.gov>
Cc: Bohn, Cynthia <cynthia_bohn@fws.gov>, Emily Jernigan <emily_wells@fws.gov>, Dana Wright <dana_wright@fws.gov>, Katie Niemi <katie_niemi@fws.gov>

The Wilmington Corps (Eric Gasch from Civil Works) called on Friday and said that they have interpreted the Secretary's letter to allow them to continue dredging Masonboro Inlet and Carolina Inlet, and placing the sand outside of the CBRS unit. They will continue to look offshore for sand because the amount of sand they can dredge from Masonboro Inlet appears to be dwindling, but they intend to keep dredging both inlets for now. Before the letter, they were going to go offshore for sand instead of using the inlets.

On Mon, Nov 18, 2019 at 10:37 AM Ellis, John <john_ellis@fws.gov> wrote:

Kathy - Has the Corps contacted you re: this yet?

On Mon, Nov 18, 2019 at 9:51 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:
Thanks John: Probably also Carolina Beach and Wrightsville? c

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On Mon, Nov 18, 2019 at 8:24 AM Ellis, John <john_ellis@fws.gov> wrote:
I imagine we will here from the Corps and from Surf City/Topsail Beach.

On Fri, Nov 15, 2019 at 11:46 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

Hello CBRA folks and field supervisors,

Per my discussion with Acting ARD 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 memo 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."

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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.

Cindy

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On Wed, Nov 6, 2019 at 12:58 PM Valenta, Aaron <aaron_valenta@fws.gov> wrote:

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Thanks,

Aaron Valenta
Chief, Division of Restoration and Recovery
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Atlanta, Georgia 30345
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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.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best
Margaret

--

Kathy Matthews
Fish and Wildlife Biologist
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U.S. Fish and Wildlife Service
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Email kathryn_matthews@fws.gov

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Jonathan T. Phinney PhD
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571-388-7526 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

From: [Bohn, Cynthia](#)
To: [Wright, Dana K](#)
Cc: [McCoy, Thomas](#); [Caldwell, Mark](#); [Niemi, Katie](#)
Subject: Re: CBRA: SOL opinion on utilizing sand
Date: Monday, November 18, 2019 12:48:19 PM
Importance: High

Thanks Dana, and I appreciate the clarification, as I was thinking the other document, too.

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On Mon, Nov 18, 2019 at 12:28 PM Wright, Dana <dana_wright@fws.gov> wrote:

Hi all,

To clarify, the fact that there is a new interpretation is not what is close hold. Secretary Bernhardt's letters to Reps. Van Drew and Rouzer are in the public domain through the media (we are assuming they got copies of the letters from the members' offices). What we have been asked not to release is the Solicitor's memo explaining the rationale for the new interpretation. To our knowledge, the Corps does not have that memo and it has not yet been shared outside of DOI.

Thanks,

Dana

On Mon, Nov 18, 2019 at 12:13 PM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

Hi Tom, I think they just decided that. It was sent to the Congressional folks that had contacted the Secretary first, they probably sent it to the Corps. The Service did not hear about it until later and our usual Solicitor did not see it until HQ sent it to him. So yes, there is a kink in the chain! c

Cynthia Bohn
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On Sat, Nov 16, 2019 at 3:12 PM Thomas McCoy <thomas_mccoy@fws.gov> wrote:

If it was a close hold, why did the USACOE-Charleston District know first about this change and provided me documentation of the change before we got it from HQ? It has got out somewhere before the RO/FOs heard.

Tom McCoy, Field Supervisor for Ecological Services

Department of the Interior – U.S. Fish and Wildlife Service

South Atlantic-Gulf Region (Region 2)

South Carolina Ecological Services Field Office

176 Croghan Spur Road, Suite 200

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Main Phone Line: 843.727.4707

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Email: thomas_mccoy@fws.gov

Visit our Web Page for more information about our office:
<https://www.fws.gov/southeast/charleston>.

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

Sent: Friday, November 15, 2019 11:47 AM

To: Valenta, Aaron <aaron_valenta@fws.gov>; Stephen Ricks <stephen_ricks@fws.gov>; Cary Norquist <cary_norquist@fws.gov>; Joseph Ranson <joseph_ranson@fws.gov>; Brad Rieck <Brad_Rieck@fws.gov>; Sean Blomquist <sean_blomquist@fws.gov>; Jeff Powell <jeff_powell@fws.gov>; Bill Pearson <bill_pearson@fws.gov>; Jay Herrington <jay_herrington@fws.gov>; nikki lamp <nikki_colangelo@fws.gov>; Heath Rauschenberger <heath_rauschenberger@fws.gov>; Roxanna Hinzman <Roxanna_Hinzman@fws.gov>; Donald Imm <donald_imm@fws.gov>; Robin Goodloe <robin_goodloe@fws.gov>; Thomas McCoy <thomas_mccoy@fws.gov>; Pete Benjamin <Pete_Benjamin@fws.gov>; Tom Augspurger <tom_augspurger@fws.gov>; mark_caldwell <Mark_Caldwell@fws.gov>; Amy Trahan <amy_trahan@fws.gov>; Bruce Porter <bruce_porter@fws.gov>; channing_staubin@fws.gov; David Felder <david_felder@fws.gov>; John Savell <john_savell@fws.gov>; Christopher Hernandez <christopher_hernandez@fws.gov>; Cynthia Bohn <cynthia_bohn@fws.gov>; Emily Jernigan <emily_wells@fws.gov>; Felix Lopez <felix_lopez@fws.gov>; Gianfranco Basili <gianfranco_basili@fws.gov>; Jeffrey Howe <jeffrey_howe@fws.gov>; John Ellis <john_ellis@fws.gov>; Joshua Marceaux <joshua_marceaux@fws.gov>; Lydia Ambrose <lydia_ambrose@fws.gov>; Matthias Laschet <matthias_laschet@fws.gov>; melody ray-culp <Melody_Ray-Culp@fws.gov>; Paul Necaie <Paul_Necaie@fws.gov>; Shana DiPalma <shana_dipalma@fws.gov>; Shawn Christopherson <shawn_christopherson@fws.gov>; Zakia Williams <zakia_williams@fws.gov>

Cc: Michelle Eversen <michelle_eversen@fws.gov>; Jack Arnold <Jack_Arnold@fws.gov>; Jeff Weller <Jeff_Weller@fws.gov>; Larry Williams <larry_williams@fws.gov>; Katie Niemi <katie_niemi@fws.gov>; Jon Hemming <jon_hemming@fws.gov>; David Horning <david_horning@fws.gov>

Subject: Re: CBRA: SOL opinion on utilizing sand

Hello CBRA folks and field supervisors,

Per my discussion with Acting ARD 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 memo 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 SOL has advised that we not release the 10/30/2019 Solicitor's memo and keep it "close hold" until further notice.**
- Until we have further guidance from HQ, please do not respond to any CBRA consultations without coordinating with me. 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.

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.

On Wed, Nov 6, 2019 at 12:58 PM Valenta, Aaron <aaron_valenta@fws.gov> wrote:

FYI. New SOL opinion and DOI guidance on ability to remove sand from a CBRA unit for beach nourishment elsewhere. Effective immediately.

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: "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.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best

Margaret

From: [Bohn, Cynthia](#)
To: [Phillips, Catherine](#); [Eversen, Michelle](#); [Dekar, Matthew P](#); [Valenta, Aaron](#)
Cc: [Tawes, Robert](#); [Niemi, Katie](#); [Wright, Dana K](#)
Subject: Re: Requested RD Briefing for CBRA Sand mining Department Opinion Update and Wrightsville and Carolina Beach Projects
Date: Tuesday, January 7, 2020 12:00:32 PM
Importance: High

Catherine and all:

This is a follow up email to the CBRA briefing that I had with Leo on 12/20, my last day as a Regional employee. The Region now has pending requests from the Wilmington Corps for CBRA determinations for two projects in NC; Carolina Beach, NC, Beach Renourishment Evaluation Report and Wrightsville Beach Coastal Storm Risk Management Validation Report. I received these after the briefing with Leo; but his directive to me was that the response to the Corps would be your (Catherine's) call as the ARD. I have forwarded you the Corps email request of 12/20 in a separate email, but I will resend it to you as well as others on this email with more information on the specific issues.

I would like to have a chance to discuss this with you as you should expect a call from Michelle Shaughnessy in HQ early this week. This issue has high congressional and secretarial visibility. The Wilmington Corps has asked for a CBRA response by Jan. 31.

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 Wed, Dec 11, 2019 at 12:48 PM Valenta, Aaron <aaron_valenta@fws.gov> wrote:

Hi Acquanetta and Laura,

I believe Leo asked Jack to schedule a briefing with him on the recent changes to CBRA related to sand mining in CBRA units. Attached is the briefing request form and SOL opinion.

If Leo's in, the week of the 16th would be best since this is Cindy Bohn's last week as an RO employee.

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.

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

From: **Bohn, Cynthia** <cynthia_bohn@fws.gov>
Date: Wed, Dec 11, 2019 at 12:01 PM
Subject: Requested RD Briefing for CBRA Sand mining Department Opinion Update and Wrightsville and Carolina Beach Projects
To: aaron valenta <Aaron_Valenta@fws.gov>

Please see the documents attached and let me know what else I need to do. 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.

From: [Niemi, Katie](#)
To: [Wright, Dana K](#)
Subject: Fwd: CBRA Sand Mining TPs
Date: Thursday, January 9, 2020 9:59:43 AM
Attachments: [CBRA Sand Mining Talking Points.docx](#)

FYI. I just spoke with Brian. Not sure who drafted the attached talking points but they look fine. Brian knows we've drafted two other documents that will be coming their way soon.

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

From: **Hires, Brian** <brian_hires@fws.gov>
Date: Thu, Jan 9, 2020 at 9:46 AM
Subject: Fwd: CBRA Sand Mining TPs
To: Katie Niemi <katie_niemi@fws.gov>

Hi Katie, can we discuss this this morning? Thanks,

[Brian Hires](#)

[U.S. Fish and Wildlife Service](#) | [Office of Public Affairs](#) | Falls Church, VA
(Office) 703.358.2191 | (Cell) 703.346.9941

On Thu, Jan 9, 2020 at 9:23 AM Shire, Gavin <gavin_shire@fws.gov> wrote:

Brian,

Can you run the attached by Katie. She is also working on some examples of projects that would not meet the act's purposes. This is the top priority for this morning. I can explain.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

CBRA Sand Mining Talking Points

General CBRA Messages:

- The Fish and Wildlife Service is committed to implementing the Coastal Barrier Resources Act, according to its purposes of:
 - to minimizing loss of human life
 - reducing wasteful expenditure of federal resources and
 - protecting the natural resources associated with coastal barriers
- We continue to update and modernize our implementation of the act through revised digital maps and where appropriate, revised legal interpretations of the statute.

Messages on the 2019 legal memo:

- The revised legal interpretation on sand mining concludes Congress did not intend to constrain agencies in their ability to accomplish the act's overarching purpose of protecting coastal barrier resources. Rather, the act should be applied in a way that furthers this purpose.
- The act does not explicitly say sand may not be removed from within the system in order to apply it to areas outside the system for the purpose of shoreline stabilization.
- This legal interpretation does not *guarantee* that sand within the Coastal Barrier Resources System may be used for beach replenishment outside the system, but it does make such projects eligible for consideration.
- Projects must further the purposes of the Act (see above three bullets).
- Project must be nonstructural, must be for the purposes of shoreline stabilization and must mimic, enhance or restore natural stabilization systems.
- We will assess all projects on a case-by-case basis.

Background:

Coastal barriers contain significant cultural and natural resources, including wildlife habitat and breeding/spawning areas. They also function as natural storm buffers, protecting coastal communities and their economies.

Congress passed the Coastal Barrier Resources Act of 1982 to address problems caused by coastal barrier development. CBRA restricts most federal expenditures and financial assistance that tend to encourage development, including Federal flood insurance, in the John H. Chafee Coastal Barrier Resource System.

The CBRS has been modified by legislation four times since then: the Coastal Barrier Improvement Act of 1990, Coastal Barrier Resources Reauthorization Act of 2000, Coastal Barrier Resources Reauthorization Act of 2005, and Strengthening Coastal Communities Act of 2018. These acts included reauthorization of CBRA, expansion of the system, revised mapping, and reporting requirements.

The Coastal Barrier Resources Act and its amendments prohibit most new federal expenditures that tend to encourage development or modification of coastal barriers. The laws do not restrict activities carried out with private or other non-federal funds and only apply to the areas that are within the defined John H. Chafee Coastal Barrier Resource System (CBRS). The main prohibition affecting property owners is the prohibition on federal flood insurance.

Local communities had raised concerns about their inability to receive federal funds for beach renourishment and asked the Department of the Interior to revisit a 1994 legal interpretation that concluded federal funds may only be used to renourish beaches *within* the CBRs system. Projects outside the system were not eligible. Our revised legal interpretation responds to those requests.

From: [Shaughnessy, Michelle](#)
To: [Hires, Brian K](#)
Cc: [Niemi, Katie](#)
Subject: Re: CBRA Sand Mining TPs
Date: Thursday, January 9, 2020 1:24:39 PM
Importance: High

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

On Jan 9, 2020, at 1:18 PM, Hires, Brian <brian_hires@fws.gov> wrote:

Hi Michelle,

Just a quick check in with you regarding the approved CBRS language examples needed for the Aurelia Skipwith interview with Coastal Review. Sounds like that language is needed within the next hour or so. Please call or write if you have questions or follow up on anything. Thanks!

[Brian Hires](#)

[U.S. Fish and Wildlife Service](#) | [Office of Public Affairs](#) | Falls Church, VA
(Office) 703.358.2191 | (Cell) 703.346.9941

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

From: **Hires, Brian** <brian_hires@fws.gov>
Date: Thu, Jan 9, 2020 at 9:56 AM
Subject: Re: CBRA Sand Mining TPs
To: Shire, Gavin <gavin_shire@fws.gov>

Katie said this all looks good, the examples will be forthcoming shortly from Michelle Shaughnessy.

[Brian Hires](#)

[U.S. Fish and Wildlife Service](#) | [Office of Public Affairs](#) | Falls Church, VA
(Office) 703.358.2191 | (Cell) 703.346.9941

On Thu, Jan 9, 2020 at 9:23 AM Shire, Gavin <gavin_shire@fws.gov> wrote:

Brian,

Can you run the attached by Katie. She is also working on some examples of projects that would not meet the act's purposes. This is the top priority for this

morning. I can explain.

G

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

From: [Niemi, Katie](#)
To: [Wright, Dana K](#)
Subject: Fwd: Revised Rep. Van Drew letter in DTS (069830)
Date: Monday, April 29, 2019 1:40:05 PM
Attachments: [069830 Van Drew mbl.docx](#)

I think these changes are fine.

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

From: **BalisLarsen, Martha** <martha_balislarsen@fws.gov>
Date: Mon, Apr 29, 2019 at 12:40 PM
Subject: Re: Revised Rep. Van Drew letter in DTS (069830)
To: Niemi, Katie <katie_niemi@fws.gov>
Cc: Jonathan Phinney <jonathan_phinney@fws.gov>

Katie, I have a couple of minor suggested edits for the memo. Any concerns with incorporates these edits?

Martha

On Mon, Apr 29, 2019 at 10:40 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Martha,

We've revised the response letter to Rep. Van Drew (DCN 069830) to incorporate the changes that we discussed with Margaret, Wendi and Gary last Thursday. The revised letter (as well as new enclosure with Sol Opinion and December 2018 letter to Rep. LoBiondo) is now in DTS.

Can you please let Gary and/or Lois know the revised letter is in DTS and ready for Margaret's review/surname.

Thanks!
Katie

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

Thank you for your letter of March 14, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the U.S. Army Corps of Engineers' (Corps) Townsends Inlet to Cape May Inlet Shore Protection Project. Your letter proposes that a borrow site within Stone Harbor Unit NJ-09 of the John H. Chafee Coastal Barrier Resources System (CBRS) be reclassified to an Otherwise Protected Area (OPA). ~~This Such a~~ reclassification would allow federal funds to be used to dredge sand for the renourishment of a federally-authorized coastal storm damage reduction project extending from Avalon to Stone Harbor.

The Coastal Barrier Resources Act of 1982 (CBRA) (Pub. L. 97-348) originally established the CBRS. 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. The CBRS is currently comprised of 870 geographic units totaling 3.5 million acres and contains two types of units: "OPAs" and "System Units." OPAs (comprised predominantly of park lands and aquatic habitat at the time of designation) only restrict federal flood insurance. System Units (comprised predominantly of private lands and aquatic habitat at the time of designation) are subject to CBRA's full suite of restrictions on new federal expenditures and financial assistance. Stone Harbor Unit NJ-09 was designated as a System Unit by Congress through the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101-591) on November 16, 1990.

The CBRS is depicted on a set of maps that is maintained by the Service. Aside from three minor exceptions¹, only legislation enacted by Congress can modify the CBRS maps. The Service does not have the authority to administratively reclassify Unit NJ-09 from a System Unit to an OPA. ~~Such a~~ change ~~would~~ requires legislative action.

The Service is conducting a project to produce modernized maps for the CBRS units in the nine states most affected by Hurricane Sandy, including New Jersey. This project supports a Congressional directive in the 2006 CBRA reauthorization (Pub. L. 109-226) requiring the Service to produce digital maps for the entire CBRS and make recommendations for its expansion. In the process of preparing the draft revised boundaries for this project, the Service conducted a comprehensive review of each unit. When reviewing unit type classifications (System Unit versus OPA), we considered whether areas (at the time of designation) were held for conservation or recreation in perpetuity and met the CBIA definition of "otherwise protected," meaning "within the boundaries of an area established under federal, state, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes."

The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 re-affirmed that the area was appropriately included within the System Unit and found no new evidence indicating that it was "otherwise protected" at the time of designation in 1990. Furthermore, in 1982 the New Jersey Department of Environmental Protection urged the inclusion of the Stone Point

Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters). As stated in the *Federal Register* notice for the project (83 FR 10739), if an area is dedicated to conservation and/or recreation after its initial inclusion within a System Unit, it is generally not reclassified to an OPA.

The Service released draft revised boundaries for the first batch of CBRS units included in the Hurricane Sandy Remapping Project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We received comments regarding Unit NJ-09. We also recently conducted a 120-day public review of the draft revised boundaries for the second batch of the project. That comment period closed on April 17, 2019. Now that both comment periods have closed, we will begin preparing final recommended maps along with summaries of and responses to the comments received for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

Your letter also noted that the Service had originally approved a Corps project within the unit, but in 2016 reversed our position. We'd like to clarify that the scope of the previous project in the 1990s was significantly different from the project proposed in 2016. It is our understanding that the previous project utilized sand dredged from within Unit NJ-09 exclusively for a one time environmental restoration project at Stone Harbor Point within the CBRS unit. The 2016 project proposed to use sand dredged from within Unit NJ-09 to nourish a developed shoreline outside of the CBRS. Please see the enclosed 1994 Solicitor's opinion as well as a 1995 letter to the U.S. Army Corps of Engineers and 2018 letter to Representative LoBiondo regarding the Service's interpretation of CBRA on this matter.

Commented [WDK1]: Revised per discussion with Margaret 4/25/2019

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

Enclosures

ⁱ These exceptions, found in 16 U.S.C. 3503, include: (1) CBRA's five-year review requirement that solely considers changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess federal property to the CBRS.

From: [Niemi, Katie](#)
To: [Kodis, Martin](#)
Subject: Fwd: revised letter Van Drew
Date: Tuesday, May 21, 2019 11:08:35 AM
Attachments: [069830 Van Drew draft final CLA post FWP.docx](#)

Do you need anything from us at this point?

Katie

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

From: **Kodis, Martin** <martin_kodis@fws.gov>
Date: Mon, May 20, 2019 at 3:59 PM
Subject: revised letter Van Drew
To: Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>

This is where we're headed. Open ended comment that we're reviewing the 1994 SOL Opinion.

--

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](#)
Subject: Fwd: revised letter Van Drew
Date: Tuesday, May 21, 2019 11:09:01 AM
Attachments: [069830 Van Drew draft final CLA post FWP.docx](#)

See attached

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

From: **Kodis, Martin** <martin_kodis@fws.gov>
Date: Mon, May 20, 2019 at 3:59 PM
Subject: revised letter Van Drew
To: Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>

This is where we're headed. Open ended comment that we're reviewing the 1994 SOL Opinion.

--

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

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

Thank you for your letter of March 14, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the U.S. Army Corps of Engineers' (Corps) Townsends Inlet to Cape May Inlet Shore Protection Project. Your letter requests the Service to consider reclassifying a borrow site within Stone Harbor Unit NJ-09 of the John H. Chafee Coastal Barrier Resources System (CBRS) to an Otherwise Protected Area (OPA). Such a reclassification would allow federal funds to be used to dredge sand for the renourishment of a federally-authorized coastal storm damage reduction project extending from Avalon to Stone Harbor. The Service does not have the authority to administratively reclassify Unit NJ-09 from a System Unit to an OPA; such a change requires legislative action.

By way of background, the Coastal Barrier Resources Act of 1982 (CBRA) (Pub. L. 97-348) originally established the CBRS. 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. The CBRS contains two types of units: "OPAs" and "System Units." Stone Harbor Unit NJ-09 was designated as a System Unit by Congress through the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101-591) on November 16, 1990. Like all System Units, it is subject to CBRA's full suite of restrictions on new federal expenditures and financial assistance. OPAs (comprised predominantly of park lands and aquatic habitat at the time of designation) only restrict federal flood insurance.

The Service recently reviewed Unit NJ-09 as part of an ongoing project to produce modernized maps for the CBRS units in the nine states most affected by Hurricane Sandy, including New Jersey. The Hurricane Sandy Remapping Project supports a Congressional directive in the 2006 CBRA reauthorization (Pub. L. 109-226) requiring the Service to produce digital maps for the entire CBRS and make recommendations to Congress for its expansion. In the process of preparing the draft revised boundaries for this project, the Service conducted a comprehensive review of each unit, including whether areas at the time of designation were held for conservation or recreation in perpetuity and met the CBIA definition of "otherwise protected."

The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 affirmed that the area was appropriately included within the System Unit and found no evidence indicating that it was "otherwise protected" at the time of designation in 1990. The New Jersey Department of Environmental Protection in 1982 also supported the inclusion of the Stone ~~Point~~ Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters).

We continue to move forward with the Hurricane Sandy Remapping Project. The Service released draft revised boundaries for the first batch of CBRS units in the project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We also completed a 120-day public review in April 2019 of the draft revised boundaries for the second batch of the project. Now that both comment periods have closed, we will complete our review of comments received,

including comments regarding Unit NJ-09, and begin preparing final recommended maps along with summaries of and responses to the comments received for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

Your letter also referenced a restoration project from the 1990s that borrowed sand from Unit NJ-09 – that project differed from the project proposed in 2016. The 1990s project utilized sand dredged from within Unit NJ-09 for an environmental restoration project at Stone Harbor Point within the CBRS unit. The 2016 project proposed to use sand dredged from within Unit NJ-09 to nourish a developed shoreline outside of the CBRS. The Service's determination on the 2016 project was guided by the enclosed 1994 Solicitor's opinion. Based on your interest in this matter, we are reviewing the 1994 Solicitor's opinion. Please see the enclosed 1994 Solicitor's opinion as well as a 1995 letter to the Corps and 2018 letter to Representative LoBiondo regarding the Service's interpretation of CBRA on this matter.

We thank you for your interest in this matter. We will keep your office informed of any developments in the Hurricane Sandy Remapping Project and our review of the 1994 Solicitor's opinion. If you have any additional questions, please contact the Service's Chief of Congressional and Legislative Affairs, Mr. Martin Kodis, at (703) 358-2241.

Sincerely,

Principal Deputy Director

Enclosures

From: [Niemi, Katie](#)
To: [Kodis, Martin](#)
Cc: [Wright, Dana K](#)
Subject: Fwd: revised letter Rep. Van Drew
Date: Wednesday, May 22, 2019 11:48:55 AM
Attachments: [069830 Van Drew draft final CLA post FWP lyc.docx](#)
Importance: High

Recommended edits from Linus.

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

From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Wed, May 22, 2019 at 11:01 AM
Subject: Re: revised letter Rep. Van Drew
To: Niemi, Katie <katie_niemi@fws.gov>
Cc: Benjamin Jesup <benjamin.jesup@sol.doi.gov>

Thanks Katie. Suggested comment (mention public comments can be viewed on [regulations.gov](https://www.regulations.gov)?) and edit (1994 memorandum opinion from SOL-BFW, so no confusion with "Solicitor's opinion") in attached.

On Wed, May 22, 2019 at 9:22 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI. Attached is the revised Rep. Van Drew letter. Open ended comment that we're reviewing the 1994 SOL Opinion.

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

Thank you for your letter of March 14, 2019, to the U.S. Fish and Wildlife Service (Service) concerning the U.S. Army Corps of Engineers' (Corps) Townsends Inlet to Cape May Inlet Shore Protection Project. Your letter requests the Service to consider reclassifying a borrow site within Stone Harbor Unit NJ-09 of the John H. Chafee Coastal Barrier Resources System (CBRS) to an Otherwise Protected Area (OPA). Such a reclassification would allow federal funds to be used to dredge sand for the renourishment of a federally-authorized coastal storm damage reduction project extending from Avalon to Stone Harbor. The Service does not have the authority to administratively reclassify Unit NJ-09 from a System Unit to an OPA; such a change requires legislative action.

By way of background, the Coastal Barrier Resources Act of 1982 (CBRA) (Pub. L. 97-348) originally established the CBRS. 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. The CBRS contains two types of units: "OPAs" and "System Units." Stone Harbor Unit NJ-09 was designated as a System Unit by Congress through the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101-591) on November 16, 1990. Like all System Units, it is subject to CBRA's full suite of restrictions on new federal expenditures and financial assistance. OPAs (comprised predominantly of park lands and aquatic habitat at the time of designation) only restrict federal flood insurance.

The Service recently reviewed Unit NJ-09 as part of an ongoing project to produce modernized maps for the CBRS units in the nine states most affected by Hurricane Sandy, including New Jersey. The Hurricane Sandy Remapping Project supports a Congressional directive in the 2006 CBRA reauthorization (Pub. L. 109-226) requiring the Service to produce digital maps for the entire CBRS and make recommendations to Congress for its expansion. In the process of preparing the draft revised boundaries for this project, the Service conducted a comprehensive review of each unit, including whether areas at the time of designation were held for conservation or recreation in perpetuity and met the CBIA definition of "otherwise protected."

The Service's recent review of the Stone Harbor Point and Hereford Inlet area within Unit NJ-09 affirmed that the area was appropriately included within the System Unit and found no evidence indicating that it was "otherwise protected" at the time of designation in 1990. The New Jersey Department of Environmental Protection in 1982 also supported the inclusion of the Stone ~~Point~~ Harbor Point area within the CBRS, and in 1987 the State of New Jersey again recommended the inclusion of the area within the CBRS (see enclosed letters).

We continue to move forward with the Hurricane Sandy Remapping Project. The Service released draft revised boundaries for the first batch of CBRS units in the project, including those located in New Jersey, and conducted a 120-day public review period in 2018. We also completed a 120-day public review in April 2019 of the draft revised boundaries for the second batch of the project. Now that both comment periods have closed, we will complete our review of comments received,

Commented [CLV1]: Mention public comments can be viewed at regulations.gov?

including comments regarding Unit NJ-09, and begin preparing final recommended maps along with summaries of and responses to the comments received for Congressional consideration. The revised CBRS boundaries (including proposed additions, removals, and reclassifications) will only become effective once the final recommended maps are adopted into law by Congress.

Your letter also referenced a restoration project from the 1990s that borrowed sand from Unit NJ-09 – that project differed from the project proposed in 2016. The 1990s project utilized sand dredged from within Unit NJ-09 for an environmental restoration project at Stone Harbor Point within the CBRS unit. The 2016 project proposed to use sand dredged from within Unit NJ-09 to nourish a developed shoreline outside of the CBRS. The Service's determination on the 2016 project was guided by the enclosed 1994 ~~Solicitor's~~ memorandum opinion from the Solicitor's Office Branch of Fish and Wildlife. Based on your interest in this matter, we are reviewing the 1994 Solicitor's opinion. Please see the enclosed 1994 Solicitor's opinion as well as a 1995 letter to the Corps and 2018 letter to Representative LoBiondo regarding the Service's interpretation of CBRA on this matter.

We thank you for your interest in this matter. We will keep your office informed of any developments in the Hurricane Sandy Remapping Project and our review of the 1994 Solicitor's opinion. If you have any additional questions, please contact the Service's Chief of Congressional and Legislative Affairs, Mr. Martin Kodis, at (703) 358-2241.

Sincerely,

Principal Deputy Director

Enclosures

From: [Niemi, Katie](#)
To: [Chen, Linus Y](#)
Subject: Re: revised letter Rep. Van Drew
Date: Wednesday, May 22, 2019 12:49:25 PM

Thanks. I passed your comments on.
Katie

On Wed, May 22, 2019 at 11:01 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:
Thanks Katie. Suggested comment (mention public comments can be viewed on regulations.gov?) and edit (1994 memorandum opinion from SOL-BFW, so no confusion with "Solicitor's opinion") in attached.

On Wed, May 22, 2019 at 9:22 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI. Attached is the revised Rep. Van Drew letter. Open ended comment that we're reviewing the 1994 SOL Opinion.

--

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

From: [Niemi, Katie](#)
To: [Kodis, Martin](#)
Subject: Fwd: revised letter Rep. Van Drew
Date: Thursday, May 23, 2019 9:04:11 AM
Attachments: [069830 Van Drew draft final CLA post FWP lyc bcj.docx](#)

Passing along hyphen edits from Ben.

Katie

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

From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
Date: Thu, May 23, 2019 at 7:41 AM
Subject: Re: revised letter Rep. Van Drew
To: Chen, Linus <linus.chen@sol.doi.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>

FYI, some suggested hyphen edits.

Thanks.

Ben

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--

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

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In Reply Refer To:
FWS/AES/DBTS/BGMTS/069830

The Honorable Jefferson Van Drew
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Van Drew:

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Sincerely,

Principal Deputy Director

Enclosures

From: [Niemi, Katie](#)
To: [Jesup, Benjamin C](#)
Cc: [Chen, Linus Y](#)
Subject: Re: revised letter Rep. Van Drew
Date: Thursday, May 23, 2019 10:00:19 AM

Thanks Ben. I sent your edits forward.

Katie

On Thu, May 23, 2019 at 7:41 AM Jesup, Benjamin <benjamin.jesup@sol.doi.gov> wrote:
FYI, some suggested hyphen edits.

Thanks.

Ben

On Wed, May 22, 2019 at 11:01 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:
Thanks Katie. Suggested comment (mention public comments can be viewed on regulations.gov?) and edit (1994 memorandum opinion from SOL-BFW, so no confusion with "Solicitor's opinion") in attached.

On Wed, May 22, 2019 at 9:22 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI. Attached is the revised Rep. Van Drew letter. Open ended comment that we're reviewing the 1994 SOL Opinion.

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

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Ben Jesup
Assistant Solicitor for Fish and Wildlife
Solicitor's Office
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202-208-3170

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From: [Niemi, Katie](#)
To: [BalisLarsen, Martha](#); [Kodis, Martin](#)
Subject: Fwd: HNR Hearing Video (Rep. Van Drew and CBRS Unit NJ-09)
Date: Tuesday, May 28, 2019 2:36:56 PM

Martha & Marty,
Please see Linus' offer below. Is this something that would be helpful at this stage? Thanks.

Katie

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

From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Tue, May 28, 2019 at 11:20 AM
Subject: Re: HNR Hearing Video (Rep. Van Drew and CBRS Unit NJ-09)
To: Wright, Dana <dana_wright@fws.gov>
Cc: Katie Niemi <Katie_Niemi@fws.gov>

Hi All,

Hope you all had a good 3-day weekend.

b5-ACP



Linus

On Tue, May 21, 2019 at 5:34 PM Wright, Dana <dana_wright@fws.gov> wrote:

Hi Linus,

I'm at a conference right now - I recommend that you call Katie tomorrow for an update - 703-358-2071.

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, May 21, 2019 at 4:08 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Finally saw video. Supposedly FWS owes Van Drew a response? Have we heard from the Secretary's office on this? Was a letter already sent? If not, do I need to review (and

when can I expect the draft letter)?

On Fri, May 17, 2019 at 10:18 AM Wright, Dana <dana_wright@fws.gov> wrote:
No, I haven't heard anything about it.

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

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

On Fri, May 17, 2019 at 9:47 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:
Do we know anything relevant about Rep. Rouzer's 5/6 roundtable on Hurricane Florence (it's on his homepage)
<https://rouzer.house.gov/>

On Fri, May 17, 2019 at 6:01 AM Wright, Dana <dana_wright@fws.gov> wrote:
I haven't heard about TX but yes to NC (Rep. Rouzer).

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

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

On Thu, May 16, 2019 at 4:38 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:
Thanks. Will try to take a look at this later.
Interesting, Van Drew is a Dem (NJ). Are Representatives in NC and TX participating in these meetings also?

On Thu, May 16, 2019 at 3:47 PM Wright, Dana <dana_wright@fws.gov> wrote:
Hi Ben and Linus,

The CBRA/sand mining issue came up at the HNR Budget hearing yesterday (please see video below). I wanted to pass this along to keep you in the loop given the significant Congressional interest in this issue recently. It is my understanding that there are meetings happening or being scheduled between interested Representatives and Secretary Bernhardt and Principal Deputy Director Margaret Eversen.

Link below to a Cape May Herald article about the CBRA Hereford Inlet issue.

https://www.capemaycountyherald.com/news/government/article_05f7cd4e-77e3-11e9-b3df-e3637dd25ec4.html

Link below to a press release from Rep. Van Drew's office.

<https://vandrew.house.gov/media/press-releases/van-drew-urges-secretary-bernhardt-fix-bureaucratic-error-and-save-stone-1>

Thanks,

Dana Wright
Program Specialist
Ecological Services
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703-358-1800 (fax)

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

From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Thu, May 16, 2019 at 10:01 AM
Subject: HNR Hearing Video (Rep. Van Drew and CBRS Unit NJ-09)
To: Jonathan Phinney <jonathan_phinney@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>, Christine Eustis <christine_eustis@fws.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Eric Schradling <eric_schradling@fws.gov>, Carlo Popolizio <Carlo_Popolizio@fws.gov>, Wright, Dana <dana_wright@fws.gov>

Hi Folks,

Yesterday the Secretary testified before the House Natural Resources Committee at a hearing on the Department's budget, policies, and priorities for FY 2020. Below is a link to the hearing video. See time marker 2:27 for Rep. Van Drew's questions regarding CBRA and Hereford Inlet.

<https://youtu.be/oDSiCD4poHE>

We have already provided CLA with copies of relevant correspondence that we have in our CBRA HQ records as well as talking points on this matter.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service

Ecological Services, MS: ES
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