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.

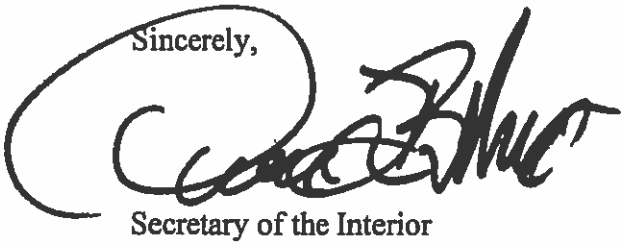
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches 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,



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.

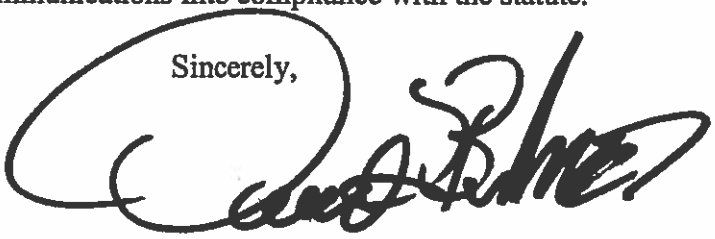
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches 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,



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,

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 damage[4] 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.

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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.