



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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FWS/R3/ES

Memorandum

To: Assistant Regional Director, Midwest Region 3, Ecological Services
Attn: Regional Coastal Barrier Resources Act Coordinator

From: Great Lakes Restoration Initiative Coordinator, Midwest Region 3, Ecological Services

Subject: Request for Initiation of Programmatic Intra-Service Coastal Barrier Resources Act Consultation Approach for Great Lakes Restoration Initiative Activities

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Date: 2022.12.07 11:24:30 -06'00'

On behalf of all U.S. Fish and Wildlife Service (Service) programs in Regions 3 and 5 conducting fish and wildlife protection, restoration, and enhancement and related activities in the Great Lakes with funding provided by the Great Lakes Restoration Initiative (GLRI), we request initiation of a programmatic consultation approach under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 et seq.). We understand Federal agencies, including the Service ourselves, are required to consult with the Service prior to expenditure of Federal funds or provision of financial assistance within a Unit of the John H. Chafee Coastal Barrier Resources System (CBRS). The purpose of the requested programmatic consultation approach is to ensure that the types of projects and activities conducted by the Service funded through the GLRI, described below, comply with the provisions of CBRA and that the consultation process is completed efficiently and expeditiously.

The CBRA encourages the conservation of hurricane-prone and biologically rich coastal barriers and, accordingly, established 85 Units in the Great Lakes within the states of Minnesota, Wisconsin, Michigan, Ohio, and New York. No new expenditures or financial assistance may be made available under authority of any Federal law for any purpose within Units of the CBRS for a variety of activities, such as construction or purchase of roads, structures, facilities, or related infrastructure, most projects to prevent the erosion of or otherwise stabilize any inlet, shoreline, or inshore area, and provision of loans, grants, and other financial assistance. 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 CBRA's exceptions (16 U.S.C. 3505), which are identified below.

Description of the Proposed Action or Project

Provide a description of the action or project, including the Federal funding source. Any type of action or project that you want to be covered by this programmatic consultation should be fully described here.

The GLRI, initiated in 2010, is a non-regulatory program to accelerate efforts to protect and restore the Great Lakes by providing supplemental resources to make progress in meeting the most critical long-term goals for this important ecosystem. The FY2021 Omnibus Appropriations Bill signed into law in December 2020 includes the Great Lakes Restoration Initiative Authorization Act, which provided authorization for funding of \$330 million in FY2021 with annual increases up to a total of \$475 million in FY2026 for direct support for on-the-ground restoration projects across the Great Lakes. In addition, the Bipartisan Infrastructure Law signed into law in November 2021 provides an additional, one-time influx of \$1 billion for restoration of the Great Lakes, most of which is being devoted to accelerate the clean-up and restoration of severely degraded sites and, ultimately, delisting many of the Areas of Concern designated by the Great Lakes Water Quality Agreement.

Under the GLRI, the U.S. Environmental Protection Agency's Great Lakes National Program Office serves as overall, day-to-day coordinator of GLRI activities. U.S. EPA transfers GLRI funding, which is appropriated annually, to the Federal agencies participating in GLRI via Interagency Agreements that specify what projects will be implemented, what outputs and outcomes will be achieved, and associated funding levels.

Activities and projects conducted under the GLRI are guided by five-year Action Plans. Action Plan 3, which became operational in 2019 and covers the years 2020 through 2024, addresses five priority areas: Toxic Substance and Areas of Concern; Invasive Species; Nonpoint Source Pollution Impacts on Nearshore Health; Habitat and Species; and Foundations for Future Restoration Actions. The plan is available at <https://www.epa.gov/sites/production/files/2019-10/documents/glri-action-plan-3-201910-30pp.pdf>. U.S. EPA and the Federal GLRI agencies are initiating development of Action Plan 4, which will identify priorities, targets, and other information to guide implementation of GLRI over the five-year period beginning in 2025.

Action Plan 3 specifies priorities and objectives with related commitments and measures of progress for each of five Focus Area. GLRI federal agencies, including the Service, identify and implement programs and projects that best advance progress toward achieving long-term Great Lakes goals in partnership with states, tribes, and other nonfederal stakeholders. The Service's GLRI-funded projects are developed in collaboration with Federal, state, tribal, and other partners. The Service conducts a wide variety of activities and projects under the GLRI intended to protect and restore the Great Lakes. Examples of the types of projects and activities include the following:

Focus Area 1: Toxic Substances and Areas of Concern

The Service works with State and local partners to provide technical assistance and identify and implement projects to facilitate removal of Beneficial Use Impairments in Areas of Concerns (AOC) contributing, ultimately, delisting AOCs. Priority projects guide remediation to remove contaminant pathways and mechanisms by which contaminants impair beneficial uses. In addition, the Service identifies and implements with collaborators a variety of studies that address the occurrence and effects of contaminants of mutual concern on a variety of species, including native freshwater mussels, birds, and fish, which may have implications for food webs and ecosystem health.

Focus Area 2: Invasive Species

The Service oversees a variety of programs and implements projects intended to detect and control aquatic, wetland, and terrestrial invasive species. Examples of these types of activities include but are not limited to supporting development and implementation of Great Lakes State Aquatic Invasive Species Management Plans and Tribal Aquatic Invasive Species Management Plans to conduct prevention, early detection, and control activities in the Great Lakes Basin; direct funding through existing granting mechanisms with the Great Lakes State agencies to implement the 2022 Invasive Carp Control Strategy Framework; support collaborative implementation of State and Tribal Aquatic Invasive Species Management Plans in the Great Lakes Basin; and continue to implement a Comprehensive Great Lakes Early Detection Monitoring Program across the Upper and Lower Great Lakes to implement early detection, rapid assessment, and other surveillance activities to sample for new nonnative species in the basin.

Focus Area 3: Nonpoint Source Pollution

Activities in this Focus Area seek to reduce excess nutrient loads from agricultural watersheds, emphasizing utilization of conservation systems in priority watersheds; support green infrastructure projects that capture or slow the flow of untreated runoff and filter out sediment, nutrients, and a variety of pollutants before they enter Great Lakes; and support watershed management projects that slow and intercept runoff. Specifically, the Service engages in Focus Area 3 primarily through its oversight role of the multi-Federal agency Sustain Our Great Lakes grant programs and activities that the National Fish and Wildlife Foundation administers.

Focus Area 4: Habitat and Species

The Service continues to identify and implement a wide variety of projects and programs itself and in collaboration with many Federal and state agency, tribal, and other partners to restore native fish, and other aquatic resources, such as lake trout, lake sturgeon, coregonids, and native mussels, migratory birds, imperiled species, including federally

listed species, and pollinators. In addition, the Service protects, restores, and enhances habitats on which fish and wildlife depend. This includes protecting, restoring, and enhancing inland and coastal wetlands, including those on Service lands, and other coastal, nearshore, and inland habitats, and restoring aquatic connectivity to increase the sustainability and resiliency and overall health of these species.

Focus Area 5: Foundations for Future Restoration Actions

The GLRI Federal agencies, including the Service, continue to support, initiate, and engage in activities centered on providing experience-based learning opportunities, with an emphasis on youth, to promote Great Lakes-based ecosystem education and stewardship. The Service works with other Federal agencies and partners to investigate the most significant ecological problems in the Great Lakes. The Service also participates in monitoring the health of the Great Lakes at different scales, including but not limited to, monitoring contaminants in Great Lakes fish and water. In addition, the Service helps to identify and address cross-Focus Area science priorities to support implementation of the GLRI and the Great Lakes Water Quality Agreement.

Programmatic Consultation Approach

We believe most if not all GLRI-funded projects that would occur within Units of the System do not require project-specific consultation as they are consistent with the provisions of CBRA's Specific Exceptions. For these projects, the Service program office implementing such GLRI project(s) will log into the Information for Planning and Consultation (IPaC) website (<https://ipac.ecosphere.fws.gov/>), enter the project, and request a species list. The appropriate Service Ecological Services Field Office will view the project and confirm it is consistent with the programmatic consultation approach. In those instances when Service funded or implemented GLRI projects that would occur within Units of the System do not obviously comport with the designated Specific Exceptions denoted below, the Service program office initiating such projects will enter the project into IPaC and will initiate a project-specific CBRA consultation.

Applicable Exception(s) under 16 U.S.C. 3505(a)

Identify the appropriate exception(s) for the action or project under 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. While this exception generally prohibits expansions, there is a special provision in CBRA that allows for the expansion of highways in Michigan (see 16 U.S.C. 3505(c)).

☐ 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 the purposes of CBRA (see "Justification" section below).

☒ 16 U.S.C. 350(a)(6)(A): Projects for the study, management, protection and enhancement of fish and wildlife resources and habitat, 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 chapter 2003 of title 54 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 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 purposes of CBRA, which 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 by restricting Federal expenditures and financial assistance which have the effect of encouraging development; and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

All activities and projects the Service funds and implements under the GLRI are intended and designed to, in general, protect, restore, and enhance the natural resources and associated human uses within the Great Lakes Basin and are consistent with the purposes of CBRA, including minimizing loss of human life and wasteful expenditure of Federal revenues. With respect to the purpose of minimizing damage to fish, wildlife, and other natural resources associated with coastal barriers, all projects within GLRI's Focus Area 4 are planned, implemented, and monitored specifically to benefit fish and wildlife and habitats. In addition and in general, most GLRI-funded projects conducted under Focus Areas 1, 2, 3, and 5 typically have at least indirect, if not direct, benefits to fish and wildlife and their habitats.

No activities or projects that promote development or are inconsistent with the purposes of CBRA, including structures or infrastructure that will promote development of the CBRs, will be funded under this programmatic consultation approach. Any development-related activity funded through the GLRI that is not clearly consistent with the purposes of CBRA will be considered on a case-by-case basis through a separate, project-specific consultation to determine whether it is appropriate under the exception.

Thank you for considering this request to initiate a programmatic CBRA consultation approach for the Service's GLRI-funded activities. If you have questions or need additional information, please contact Ms. Annette Trowbridge, the Service's GLRI Coordinator.

cc: FWS, Region 3 DRD
FWS, Ecological Services ARD and Deputy ARD
FWS, Fisheries ARD and Deputy ARD
FWS, Refuges, Chief and Deputy Chief
FWS, Migratory Birds, Acting Chief
FWS, Wildlife and Sport Fish Restoration, ARD and Deputy ARD
FWS, Ecological Services, Region 5 CBRA Coordinator
FWS HQ, Ecological Services, National CBRA Coordinator

U.S. Fish and Wildlife Service Response

Below is the Region 3 Coastal Barrier Resources Act (CBRA) Coordinator's response to the U.S. Fish and Wildlife Service's Great Lakes Restoration (GLRI) Coordinator's request, on behalf of all Service programs, for a programmatic CBRA consultation approach for all of our GLRI projects/activities. This response represents my opinion on behalf of Ecological Services in Region 3. **The final decision regarding the expenditure of funds based on this programmatic approach and subsequent, specific projects/actions rests with the program sponsoring the project or activity.** The Service's GLRI Coordinator has fulfilled the obligation for intra-Service consultation under CBRA for this programmatic consultation approach for all Region 3 and 5 GLRI activities.

I have reviewed the information you provided, and concur with the proposed programmatic CBRA consultation approach for GLRI projects/activities subject to the following procedure:

- The project proponent will consult the Coastal Barrier Resources System (CBRS) Mapper (<https://www.fws.gov/program/coastal-barrier-resources-act/maps-and-data>) or IPaC to determine if the project/activity would occur within the CBRS in advance of committing GLRI funds.
- The project proponent shall enter the project in the Service's Information for Planning and Consultation (IPaC) website (<https://ipac.ecosphere.fws.gov>) and request an official species list, which will automatically log the project in ECOSphere and provide the appropriate Ecological Services (ES) field office an opportunity to review it and confirm its compliance with the programmatic consultation approach and all pertinent exceptions. Please see this video <https://www.youtube.com/watch?v=DIDciJAbsAQ> for instructions on entering a project into IPaC and requesting an official species list.
- The ES field office will review the proposed project within ten business days to confirm that it is consistent with the programmatic intra-Service CBRA consultation approach and exceptions. The project/activity may proceed unless the ES field office determines it is not consistent or requires a more detailed review and contacts the initiating program/office within ten business days.
- In those instances when the project/activities that would occur within the CBRS do not obviously comport with the exceptions identified in the programmatic CBRA consultation approach, the project proponent will enter it into IPaC and initiate a project-specific CBRA consultation in advance of implementing the project/activity or releasing funds to others. This should be done proactively without waiting the ten business days for the ES field office to request it.

Additional Information/Comments

This response does not constitute consultation for any GLRI projects or activities 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.).