

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Testimony

**STATEMENT OF JACQUELINE SAVITZ, EXECUTIVE DIRECTOR,
COAST ALLIANCE
BEFORE THE SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING H.R.2304, A BILL TO EXCLUDE A PORTION OF NORTH CAPTIVA ISLAND
FROM ITS DESIGNATION AS AN OTHERWISE PROTECTED AREA UNDER THE COASTAL
BARRIER RESOURCES ACT
SEPTEMBER 17, 1998**

ON BEHALF OF THE FOLLOWING ORGANIZATIONS:

Center for Marine Conservation, Washington, DC

Ocean Advocates, Dickerson, MD

Sierra Club National Marine Wildlife and Habitat Committee

Introduction

Good morning. My name is Jacqueline Savitz and I am the Executive Director

of the Coast Alliance, a national environmental coalition that works to protect the resources of the nation's four coasts: Atlantic, Pacific, Great Lakes, and Gulf of Mexico. I greatly appreciate the opportunity to offer testimony regarding H.R. 2304, a bill to delete approximately fourteen acres of North Captiva Island, Florida from Unit P19-P, an "Otherwise Protected Area" (OPA) associated with the Coastal Barrier Resources System (CBRS).

The Coast Alliance has a long track record with the CBRS. We resolutely supported its creation in the 1980's and worked hard to ensure its expansion in 1990. More recently we have worked to educate the public about the value of the Coastal Barrier Resources System and Otherwise Protected Areas and have won a law suit to protect the System against illegal mapping changes. I am here today to oppose H.R. 2304 and discuss why the passage of this bill would undermine the integrity of this country's coastal barrier protection.

The issue that Congress considered in 1982 was whether taxpayers should subsidize private development of undeveloped barrier islands. In setting up the CBRS, the U.S. Congress made this decision and the answer was no. The ultimate question raised by this bill is: Whether the parcel on North Captiva Island was inappropriately included in the CBRS?

Based on existing evidence, the Coast Alliance argues that: (1) the parcel in question was rightly included in the CBRS maps as an OPA in 1990; (2) its exclusion runs counter to Congressional intent, putting human life and property at risk; and (3) the removal of this parcel undermines the integrity of the CBRS itself. For these reasons, which are explained in more detail below, we strongly recommend an unfavorable Subcommittee report on H.R. 2304.

Despite our opposition to H.R. 2304, the Coast Alliance commends Representative Goss for introducing this measure as a free standing bill. We hope that the bill will not in any way by-pass the committee review process as others have done.

Background

The Coastal Barrier Resources Act of 1982 (CBRA), 16 U.S.C. Section 3501 et seq. (1994) (Pub. L. 97-348), established the Coastal Barrier Resources System in order to achieve three goals: to minimize the loss of human life by discouraging development in high-hazard areas, to protect fragile natural resources along the coast, and to reduce wasteful federal expenditures. Undeveloped coastal barriers included in the CBRS are prohibited from receiving federal subsidies for new, private construction. The CBRS does not prevent development from occurring, it prevents the distribution of federal funds, such as federal flood insurance, for construction. The developer is free to obtain private insurance for new development inside the System.

In 1990, Congress passed the Coastal Barrier Improvements Act (CBIA), (Pub. L. No. 101-591), as an amendment to the CBRA. Section 3503 of the statute defined "undeveloped coastal barrier" to mean:

(A) a depositional 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 (B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and near shore waters; but only if such features and associated habitats contain few man-made structures and these structures, and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological process.

Congress, through passage of the CBIA, added the parcel in question (Unit P19-P), among other undeveloped parcels to the CBRS as an "Otherwise Protected Area". Congress designated undeveloped coastal barriers, such as those held by the federal, state, or local governments, or certain other qualified organizations for conservation purposes, as OPAs. 16 U.S.C. Section 3502(1) (1990).

Under the coastal barriers laws, the United States Fish and Wildlife Service (F&WS) is authorized to give an opinion regarding the validity of changes to the System and Otherwise Protected Areas. This opinion, based on its evaluation of whether or not the parcel meets the definition of an "undeveloped" coastal barrier, is then to be considered by the Congress in determining whether or not the bill represents a valid technical correction. The key point in contention is usually whether or not the land is "undeveloped." It is for this reason that the definition of "undeveloped" used by the F&WS is of paramount importance.

To this end, the F&WS may consider whether there are fewer than one structure per five acres of fastland. 50 Fed. Reg. 8700 (March 4, 1985). The Secretary of Interior defined "structure" to mean a legally authorized building larger than 200 square feet in area, regardless of the number or size of housing units it contains. H. R. Rep. No. 101-657(I), p.6. See also 44 CFR 71 (Oct. 1, 1996). The F&WS also currently considers whether there was a full complement of infrastructure on the parcel prior to its inclusion in the System. According to the F&WS, a full complement of infrastructure includes electric lines, water lines, sewer pipes/septic systems and paved roads.

Despite the existing criteria, the CBRS and associated OPAs have come under attack from those who wish to receive federal subsidies for private development on undeveloped barrier islands and beaches. Many of these attacks have come in the form of legislative riders and amendments to unrelated bills such as the Department of the Interior Appropriations bill for FY 1999. Numerous attempts to delete parcels from the

System have been mischaracterized as "technical corrections" and have purposefully by-passed the committee review process. These inappropriate and invalid changes to the CBRS are poised to eviscerate a federal system that aims to preserve barrier islands and beaches, while saving tax dollars.

Furthermore, the subsidies that are denied through the implementation of the CBRS are not entitlements. The subsidies are unavailable to properties that were undeveloped at the time of System inclusion and that were located in a region of significant risk to storm and surge damage. Those who choose to develop in these places may do so at their own risk, regardless of who has built near them. This is the law. Changes in this law should not be taken lightly.

Findings

The Coast Alliance supports the U.S. Fish and Wildlife Service determination that H.R. 2304 is an invalid attempt to change the boundaries of Unit P19-P, and should not be implemented. The integrity of these units is of paramount importance and therefore the Coast Alliance urges Congress to base their decisions on statutory criteria. Passage of the bill on any other grounds would encourage future attempts to remove undeveloped barrier islands from the System and other OPAs.

Specifically, the Coast Alliance supports the continued existence of Unit P19-P in its entirety for the following reasons:

(1) Unit P19-P was rightly included as an Otherwise Protected Area as it was clearly undeveloped in 1990.

In 1990, the unit met the test that no more than one structure per five acres may be present in order for a parcel to be classified as undeveloped.

According to an August 10, 1998, letter to Representative Porter Goss (R-Florida) from Lee County, as of 1990, there were only three houses on Unit P19-P. Because there are more than 200 fastland acres in the unit, there were clearly fewer than one structure per five acres. As such, the parcel fails the density criterion.

The parcel does not have sufficient infrastructure that would define it as "developed".

This parcel does not meet the "full complement of infrastructure" criterion because it does not have paved roads. Additionally, in light of conflicting infrastructure criteria, it is questionable whether the criterion should be applied at all. Regardless of which criteria is used, the parcel fails the test because no proof of any preexisting infrastructure has been provided.

"Plans" to develop an island do not trigger removal from Unit P19-P.

Developers may argue that they had plans to develop the parcel in question prior to its classification as an OPA. However, plans do not equal development. In fact, CBRS criteria reject the concept of phased development and the F&WS has stated that, "[p]reparing plans to develop or acquiring permits to build do not constitute development as defined by the delineation and mapping criteria." Feb. 20, 1996 letter to Senator Bob Graham (D-Florida). Therefore the undeveloped parcel was properly included as part of Unit P19-P in 1990. In 1998, developers are still free to build on this property, but at their own risk, not the taxpayer's.

The existence of nearby and associated development is irrelevant and does not trigger removal from Unit P19-P.

By definition, there are undeveloped and developed lands along the CBRS and OPA boundaries. Granting boundary changes to every development project within an OPA that is in close proximity to preexisting development is not consistent with Congressional intent to allow federal subsidies for preexisting development only.

Information that portions of North Captiva Island were being included in Unit P19-P, as an Otherwise Protected Area was available to all interested parties for review and action at the time of inclusion.

Lack of knowledge of inclusion is not a criterion for removal and the burden was on the developer to make an argument for exclusion at that time. The F&WS notified counties about proposed changes to the CBRS, and received comments regarding the 1990 Coastal Barrier Improvements Act from individuals and organizations throughout Florida.

(2) Exclusion of this parcel from the Unit P19-P runs counter to Congressional intent to save tax dollars, human life, and the environment.

Removing this parcel from Unit P19-P would be a taxpayer rip-off, allowing developers to access federal subsidies for their risky ventures.

OPAs are denied federal flood insurance, except where development is consistent with conservation purposes. The National Flood Insurance Program (NFIP) is one of the largest domestic liabilities behind the Social Security System and it required a major taxpayer bail-out in the 1980's. Extension of additional federal flood insurance for high risk development further impacts the fund, places an unfair burden on taxpayers, destroys critical habitat, and invites human tragedy.

Encouraging development on North Captiva Island puts Americans in harm's way and does so at the expense of the U.S. Treasury.

One of the System's three objectives is the protection of human life. Since there are no roads or car access to the island, fleeing it in case of a hurricane would be perilous and extremely difficult. Removal of this parcel from Unit P19-P would set a precedent that contradicts congressional intent to minimize the loss of human life by discouraging development in high-hazard areas. Government support of such projects would convey a false sense of security and make the federal government vulnerable to repetitive pay-outs for flood and storm-related damages. It would also encourage future development on this and other barrier islands.

(3) Removal of this parcel undermines the integrity of the Coastal Barrier Resources System and Otherwise Protected Areas.

The Coast Alliance is gravely concerned about the policy implications of creating an exemption from the existing criteria for Unit P19-P's developers.

Federal flood insurance is a major federal subsidy, which encourages coastal development. Congress set up OPAs to protect coastal areas by denying this expensive subsidy. If Congress chooses to label this parcel as "developed" despite the fact that aerial photos at the time of inclusion clearly showed the lack of development in this unit, other coastal barriers will become easy targets for deep-pocket developers, who

would rather have Uncle Sam subsidize risky development, than bear the risk themselves.

Not only would H.R. 2304 give subsidies to the three structures in existence as of 1990, it would also provide taxpayer funded subsidies for structures built since then. If this bill becomes law, it will encourage developers nation-wide to attempt to have their property removed. Therefore, the Coast Alliance urges this Congress to maintain the integrity of the Coastal Barrier Resources Act and reject H.R. 2304 based on the statutory criteria.

Conclusion

The Coast Alliance is dedicated to educating the public and reminding Congress of the value of the CBRS and OPAs and the costs associated with their piecemeal destruction. Unit P19-P should remain intact because it does not meet the density or infrastructure criteria. There were only three houses in a 217 acre unit. There were no paved roads, and the mere existence of a nearby development project does not fulfill the criterion of a "full complement of infrastructure."

The goals of the CBRA -- to minimize the loss of human life by discouraging development in high-hazard areas, to protect fragile natural resources along the coast, and to reduce wasteful federal expenditures -- should trump any political pressure to allow taxpayer giveaways for unwise development.

Finally, passage of the bill on any grounds other than existing criteria would encourage future attempts to remove undeveloped barrier island protections and ultimately undermine the integrity of the CBRA itself.

Thank you, Mr. Chairman, for the opportunity to testify here today.

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