Committee on Resources
Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

STATEMENT OF STEVE ELLIS, COASTAL PROGRAM COORDINATOR,

COAST ALLIANCE

BEFORE THE SUBCOMMITTEE ON
FISHERIES CONSERVATION, WILDLIFE AND OCEANS

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING:

***H.R. 1431*, A BILL TO REAUTHORIZE AND AMEND THE COASTAL BARRIER RESOURCES ACT.**

***H.R. 34*, A BILL TO EXCLUDE A PORTION OF NORTH CAPTIVA ISLAND FROM ITS DESIGNATION AS AN OTHERWISE PROTECTED AREA UNDER THE COASTAL BARRIER RESOURCES ACT**

MAY 6, 1999

ON BEHALF OF THE FOLLOWING ORGANIZATIONS:

Caribbean Conservation Corporation - Gainesville, FL

Center for Marine Conservation - Washington, DC

Coastal Research & Education, Inc. - Miami, FL

Florida Keys Environmental Fund - Islamorada, FL

Friends of the Earth - Washington, DC

Gulf Restoration Network - New Orleans, LA

Key Deer Protection Alliance - Big Pine Key, FL

National Audubon Society - Washington, DC

National Audubon Society of New York State - Albany, NY

Natural Heritage Institute - San Francisco, CA

Natural Resources Defense Council - New York, NY

Ocean Advocates - Dickerson, MD

Protect All Children's Environment - Marion, NC

Sierra Club - National Marine Wildlife and Habitat Committee

South Carolina Coastal Conservation League - Charleston, SC

Taxpayers for Commons Sense - Washington, DC

Wise Use Movement - Seattle, WA

Introduction

Good morning. My name is Steve Ellis and I'm the Coastal Program Coordinator

for the Coast Alliance, a national environmental alliance 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 two bills affecting the Coastal Barrier Resources System (CBRS). The bills being considered today that I plan to discuss are: H.R. 1431, a bill to reauthorize and amend the CBRS and H.R. 34, a bill to delete approximately fourteen acres of North Captiva Island, Florida from Unit P19-P, an "Otherwise Protected Area" (OPA) associated with the CBRS.

We commend Rep. Jim Saxton, the Chairman of this Subcommittee for making reauthorization -- and we hope protection and expansion - of the CBRS one of his priorities for this Congress.

We would also like to thank former Congressman Tom Evans of Delaware, one of the prime architects of the CBRS, if not the prime architect. His legacy has been a program that saves lives, saves tax dollars and protects the environment. We and our children and grandchildren are indebted to his hard work and dedication to working with his fellow Congressmen and President Reagan to create this program in 1982 to protect our wallets and our precious, disappearing coastal barriers.

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 how they are a tool to combat sprawl, which affects all of us. We have been stalwart defenders of the System against attacks to unjustly remove parcels from the system, thereby providing subsidies for development of our increasingly disappearing, ecologically fragile coastal barriers. I am here today to support reauthorizing the Coastal Barrier Resources System, expanding this vital program and also protecting it from attempts to undermine it's integrity via deliberate attacks to whittle away its effectiveness piece by piece.

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.

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, for example.

The 1982 act ushered in a new era in conservation. Here was a program that saved tax dollars, saved lives and protected the fragile environment on 452,834 acres of Atlantic and Gulf Coast Barrier Islands. The program was lauded from all corners, President Reagan championed the program, saying it "… meets a national problem with less federal involvement not more." Then House Minority Whip and now Senate Majority Leader Trent Lott commented that the

Coastal Barrier Resources System "… simply says if you have to plan for the development of these barrier islands you do it at your risk."

In 1990, Congress passed the Coastal Barrier Improvements Act (CBIA), (Pub. L. No. 101-591), as an amendment to the CBRA. Among other things, the 1990 act made minor changes to the definition of a Coastal Barrier and expanded the program to include nearly 1.3 million acres of land along the Atlantic, Gulf, Great Lakes, Virgin Islands and Puerto Rico coasts, including parts of the Florida Keys. The expansion was greeted with similar acclaim from all quarters of the House of Representatives. The current Chairman of the House Resources Committee, Rep. Don Young, commented that "the (Coastal Barrier Resources) system is a sound union of conservation and economics." Chairman Saxton noted that by 1990, the original 450,000 acres in the CBRS was already estimated to have saved the American taxpayer over $1 billion. Rep. Bruce Vento may have put it best when he noted that "Coastal barriers protect communities against the devastation that can result from hurricanes, storms, and erosion. They also protect coastal wetlands which are vital to commercial and recreational fisheries and are habitat for wildlife and including endangered species and millions of waterfowl. All of this environmental and economic protection comes with a price savings to the American taxpayer. Expansion of the Coastal Barrier Resources System can save the federal government billions of dollars in flood insurance, construction subsidies, and disaster relief."

Now in 1999, this subcommittee has the opportunity to add to the legacy of Reagan and Bush, Young and Saxton, Vento and Evans - we can improve the system, strengthen it and look to expand it, so that taxpayers don't have to subsidize further unwise development. Such development will surely cost the taxpayers dearly and almost certainly consign to death the fragile coastal ecosystems present on barrier islands, nesting areas for turtles, habitat for endangered species and resting and roosting areas for migratory birds.

Reauthorization

H.R. 1431 reauthorizes the Coastal Barrier Resources System until 2004, provides for voluntary additions to the system by private landowners and charges the U.S. Fish and Wildlife Service with completing two studies and a digital mapping pilot.

As mentioned before, we ardently support the reauthorization of this essential program. We also support providing private landowners the opportunity to include their land in the CBRS. Digital mapping of the CBRS units seems to only make sense considering all the advances in cartographic technology in recent years, and although modest, the pilot project will do its part to move the FWS toward a state-of-the art system to determine the CBRS boundaries.

Other than the paper maps that the FWS has used since the 1982 creation of the program, there are other structural shortcomings with the program that can be rectified in reauthorization.

The 1990 Coastal Barrier Improvement Act defined an "undeveloped coastal barrier" to include barrier islands that are subject to wave, tidal, and wind energies - if these barriers contain few manmade structures and if the natural ecological processes are not significantly impeded.

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 was "undeveloped" at the time of inclusion. 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 to test whether natural ecological processes are significantly impeded or, in the words of the F&WS in a 1996 letter to Sen. Graham, "Intensive capitalization is a consideration only when geomorphic ecological processes are altered to the extent that the long-term perpetuation of

the coastal barrier is threatened." 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 Omnibus 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.

Recommendations

Therefore we recommend Congress codify the criteria for reviewing parcels inclusion in system. Specifically:

1) ***Density criterion of one structure (as defined above) per five acres of fastland in the unit at the time of inclusion.***

2) ***Only structures completed prior to inclusion should be considered when determining the density criteria.***

One argument used by developers to remove parcels from the system is that they didn't know the parcel was included in the system. Congress last added land to the CBRS in 1990, nearly a decade ago and, one third of the land in the system was added more than 15 years ago, therefore the believability of the "I didn't know" argument has long since expired. Furthermore, 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 the time of inclusion. The F&WS notified counties about changes to the CBRS, and received comments about the 1990 CBIA and the 1982 CBRA from individuals and organizations throughout the country. ***Since the one year grace period Congress provided elapsed long ago, reauthorization should note that all the lands currently in the system are assumed to have been properly included and all affected landowners properly identified.***

There have been a few cases where there are different opinions among various federal agencies about appropriate projects/uses of CBRS units. ***The Fish and Wildlife Service should be empowered to be the final arbiter of any inter-agency disputes regarding uses of CBRS lands. They should also make recommendations regarding other federal actions in adjacent areas that would have a negative effect on the CBRS.***

The opportunity for private property owners to include their property in the CBRS is a good initial step towards expanding the program and we applaud you for proposing it. However, since the last expansion of the program nearly a decade ago, there has been a continual loss of CBRS unit lands. Based on past history, the voluntary inclusion of parcels from private landowners will most likely not stem the flow of the loss. Pressure to develop coastal lands is only increasing and as development in high risk areas, such as barrier islands, increases the total cost of natural disasters will as well. This makes expansion of the CBRS all the more important. The F&WS should be charged with an aggressive campaign to expand the program. Not only the East, Gulf and Great Lakes coasts, but also to make the changes necessary to include the West coast. Furthermore, the F&WS should work with land conservation groups and their own refuge and park staff to explore opportunities to permanently protect some coastal barrier islands.

Congress should charge the F&WS to aggressively look for opportunities to expand the taxpayer savings and conservation benefits to additional areas along the nation's four coasts.

H.R. 1431 calls for two studies to be conducted by the F&WS. One is to examine parcels of land inside and outside the CBRS, to determine the effects of the system on the rates and patterns of development. Along those lines, a similar study nearing publication by researchers at the University of North Carolina at Chapel Hill has found that in comparing parcels immediately inside a CBRS unit on Orchid Island, Florida with similar parcels outside, the parcels outside the unit were three times as likely to have been developed since the creation of the CBRS. The study included in the reauthorization should also provide a complement to a study the F&WS is completing on the savings to the nation's taxpayer from the Coastal Barrier Resources System. We hope the F&WS will be able to expeditiously complete this study.

The other study included in the reauthorization requires the F&WS to review all of the OPAs in the CBRS to determine which lands Congress included as OPAs that don't fit the definition of an OPA in the law. While this exercise may seem innocuous on the surface, it has the potential to deal a serious blow to the CBRS and begin a process of unraveling its success.

For some of the OPAs, the accuracy or scale of the maps provided to the F&WS were not sharp enough and the border of the OPA may have unintentionally included private land or not included all of the park or protected area. But in other cases, Congress may have intended to include private lands along with the OPA rather than making them an independent CBRS unit or appending them to a nearby unit. It may have simply made sense to include the undeveloped parcels of land along with the OPA in some instances. As part of an OPA, landowners are only prevented from obtaining federal flood insurance, making their inclusion more flexible than that of a full CBRA unit.

This effort to document every single inholding, every single acre of private land within OPAs will only create a "technical correction" hit list. Unscrupulous developers and speculators will line up to turn coastlines into condos and cash in at the federal treasury. The pressure will become great to simply remove all of these parcels from the CBRS and eviscerate a large part of the system

You, the Congress, created this program to save the taxpayers money, to prevent the loss of life, and to protect the environment. Efforts were made by members on both sides of the aisle to include parcels of land. The more land protected the better. Now, not even 20 years after the program was created, the system sits at a crossroads. Do you, Congress, want to improve, strengthen and expand a successful program or do you want to consign it to a death by a thousand technical corrections?

H.R. 34 a "technical correction" to exclude a parcel of land from an OPA on North Captiva Island in Lee County, Florida is the latest in a series of attacks to pull legitimately included lands from the Coastal Barrier Resources.

The ultimate question raised by this bill is: Whether the parcel on North Captiva Island was inappropriately included in the CBRS?

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). Congress protected more than 1.8 million acres as OPAs, in addition to the nearly 1.3 million acres protected as units of the CBRS.

Based on existing evidence, the we argue that: (1) the parcel in question was rightly included in the CBRS maps as an OPA in 1990; (2) Congress reaffirmed this conclusion in their technical correction review in 1994; (3) its exclusion runs counter to Congressional intent, putting human life and property at risk; and (4) 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. 34.

Despite our opposition to H.R. 34, the we commend Representative Goss for introducing this measure as a free standing bill. We hope that the bill will not in any way bypass the committee review process as others have done.

Findings on H.R. 34

We assert that H.R. 34 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 we urge 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, we support 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 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 criterion 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) **In 1994, Congress reviewed this same OPA and concluded that this parcel was properly included in the system.**

Congress completed a series of technical corrections to lands added to the system in the 1990 CBIA. P-19P was reviewed and a parcel adjacent from to the one described in H.R. 34 was excluded from the system. You, the Congress, specifically only removed part of the private property from the OPA. It is clear that Congress intended not to exclude private lands from OPAs and intended to include this exact parcel of land in P-19P.

(3) **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. 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.

(4) **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.

This exact parcel was reviewed before and you, the Congress, decided to retain it as private land in the OPA. You decided not to remove, not to incorporate it in the full CBRS unit P-19, but to allow it to remain in P-19P. To remove it now would roll back the "sound union of conservation and economics" Chairman Young referred to in 1990.

Not only would H.R. 34 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 nationwide 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. 34.

Conclusion

Again, Mr. Chairman, we applaud you for making reauthorization of the Coastal Barrier Resources System a priority for this Congress. We think this is a great opportunity to strengthen, expand and improve a program that protects the environment while protecting the taxpayers pocketbook. It is an effective tool to limit sprawl and protect our rapidly diminishing open spaces, land that should be a legacy to our grandchildren.

To continue the good work of the Coastal Barrier Resources System we must try to limit the number of pseudo-technical corrections by codifying the criteria for inclusion, empowering the U.S. Fish and Wildlife Service as the final arbiter in inter-agency disputes affecting the CBRS and mounting an aggressive campaign to expand the system and modernize it. Finally, passage of the OPA review will encourage future attempts to remove undeveloped barrier island protections and ultimately undermine the integrity of the CBRA itself.

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. As you have stated before, Unit P19-P should remain intact, the true technical correction was made in 1994. The parcel in question 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.

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

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