

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Background

April 21, 1999

MEMORANDUM

TO: Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

FROM: Subcommittee Majority Staff

RE: Coastal Barrier Resources Reauthorization Act of 1999

The Subcommittee on Fisheries Conservation, Wildlife and Oceans will hold a legislative hearing on April 22nd at 10:00 A.M. in Room 1334, Longworth House Office Building, on several bills affecting the Coastal Barrier Resources System. The following witnesses have been invited to testify: Congressmen Porter Goss, Walter Jones and Michael Castle, former Congressman Thomas B. Evans, Jr., the Honorable Bruce Babbitt, Secretary of the Interior, Mr. James Witt, Director of the Federal Emergency Management Agency and Mr. Steve Ellis, Coastal Program Coordinator of the Coastal Alliance.

Background:

Coastal barriers are landscape features that protect the mainland, lagoons, wetlands and salt marshes from the full force of wind, wave and tidal energy. The major types of coastal barriers include fringing mangroves, tombolos, barrier islands, barrier spits, and bay barriers. Composed of sand and other loose sediments, these elongated, narrow landforms are dynamic ecosystems and prone to frequent disruption by storms. Coastal barrier systems provide habitat for a variety of wildlife, and are an important recreational resource. Despite their vulnerability to hurricane damage and shoreline recession, these areas are attractive places to locate private homes and resorts, and many have been developed.

The Coastal Barrier Resources System consists of coastal barrier units delineated on maps adopted by Congress and published in the Federal Register. The System was created by the Coastal Barrier Resources Act of 1982 (CBRA, P.L. 97-348), and greatly expanded by the CBRA amendments adopted in the Coastal Barrier Improvement Act of 1990 (P.L. 101-591). The Coastal Barrier Resources Act is unique because it is not a land acquisition statute, ***nor does it prevent or regulate development on private lands*** in these high risk areas. Instead, it prohibits the use of federal development assistance, including federal flood insurance, on property included in the System.

The authorization of appropriations for the Act expired on September 30, 1998.

Legislative History:

In 1981, the Omnibus Budget Reconciliation Act (OBRA) amended the National Flood Insurance Act of 1968 to prohibit the issuance of new federal flood insurance after October 1, 1983, "for any new construction or for substantial improvements of structures located on undeveloped coastal barriers." OBRA directed the Secretary of the Interior to designate coastal barriers under the definition contained in the Act and make recommendations to Congress on additional areas for inclusion in the System.

In August 1982, the Secretary of the Interior submitted to Congress recommendations for definitions and a list of 188 units for designation as undeveloped coastal barriers. The report used a density threshold of one structure per five acres to categorize a barrier as undeveloped. The Secretary also defined "structure" to mean a legally constructed building larger than 200 square feet in area, regardless of the number or size of housing units it contains. For later

recommendations, the criteria also included whether a complete complement of infrastructure was present. Only areas with greater than 1/4 mile of beachfront were included in the System. However, the 1/4 mile minimum may be a combination of beachfront contained in System units and adjacent, otherwise protected areas. Acting on the report's recommendations, Congress passed the Coastal Barrier Resources Act in the fall of 1982.

The 1982 Act established the Coastal Barrier Resource System (CBRS), consisting of 186 units totaling 666 miles of shoreline and 452,834 acres of undeveloped, unprotected coastal barriers on the Atlantic Ocean and Gulf of Mexico coasts. CBRS units are marked on maps prepared and maintained by the Department of the Interior (DOI), and enacted into law by Congress. Except for very minor technical changes, boundaries cannot be adjusted, and units cannot be added or deleted from the System unless Congress passes a law revising the appropriate map.

In 1988, Congress enacted the Great Lakes Barrier Act, which required DOI to identify additional units for the CBRS in the Great Lakes. Following passage of this Act, the DOI identified, and recommended for inclusion in the CBRS, 112 Great Lakes units totaling 30,150 acres of land.

In 1990, Congress enacted the Coastal Barrier Improvement Act (P.L. 101-591) that carried out many of the recommendations in the DOI report. After passage of the 1990 Act, the System contained approximately 1.272 million acres of undeveloped coastal barrier ("fastland") and associated aquatic habitat, 1,200 miles of coastline, and 560 units. This Act also required the Secretary to prepare a report on Pacific Coast coastal barriers. This report has never been submitted to the Congress.

This Act also included for the first time "otherwise protected areas" as part of the System for purposes of federal flood insurance. Examples of otherwise protected areas include: national wildlife refuges, national parks and seashores, state parks, and lands owned by private organizations for conservation purposes.

Since 1990, Congress has enacted legislation in 1992, 1994, 1995, 1996 and 1998 to amend the boundaries of System units, primarily by removing property that was incorrectly incorporated within the system when the initial maps were drawn. Most recently, the 105th Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) which corrected maps affecting several barrier sites in Florida and one in South Carolina.

Inclusion of property in the System does not prevent private development of that property, nor does it prevent actions to process and issue federal permits necessary for development. However, it does restrict the availability of any new federal assistance to develop the property. **Limitations on Federal Financial Assistance:**

Of particular importance, after October 1, 1983, no new federal flood insurance can be issued for properties in the System. Existing flood insurance policies for property currently within the System remain in force. However, if the property is damaged, it cannot be rebuilt with federal flood assistance if the cost of rebuilding is more than 50 percent of the value of the property. Insured properties outside the System can rebuild even if the entire property is destroyed. If an insured structure in the System is substantially expanded or replaced with more development, coverage is lost.

In addition to the flood insurance limitation, CBRA prohibited most new federal expenditures and financial assistance within the System if those expenditures encouraged development. Examples of prohibited federal expenditures include disaster relief, community block grants, flood control, construction of new federal highways, construction of new infrastructure, beach erosion projects, and many other types of direct and indirect federal financial assistance.

For purposes of CBRA, federal financial assistance does not include deposit insurance, purchase of mortgages by government chartered corporations and programs unrelated to development, such as entitlement payment to individuals. Also, CBRA does not affect the processing and issuing of federal permits for private construction projects in the System. Other exceptions are provided for assistance for federal navigation projects, energy resource projects, repair of existing infrastructure and roads, military and Coast Guard activities, and scientific research when these activities are consistent with the purposes of the Act.

CBRA places no restrictions on development outside the System, and development on System units can occur without

federal support.

Proposed Reauthorization: H.R. 1431:

On April 13th, 1999, Subcommittee Chairman Jim Saxton introduced H.R. 1431, a bill to amend and reauthorize the Coastal Barrier Resources Act through FY 2004. Provisions of the reauthorization bill are as follows:

- Allow private landowners to voluntarily designate parcels over 5 acres that meet appropriate criteria for inclusion in the Coastal Barrier Resources System;
- Require the Secretary to identify lands designated as "otherwise protected areas" that do not meet the criteria to be included as otherwise protected areas;
- Require the Secretary to create, update and distribute both traditional and digital maps compatible with geographic information systems (GIS) including properties in the CBRS as well as those designated as "otherwise protected areas";
- Require the Secretary to prepare a report describing how the Act has influenced the rate and pattern of development on designated coastal barriers, and the impact of development on sites not included in the CBRS;
- Authorize \$1.25 million through FY 2004 to create digital maps of the CBRS and administer the program.

Three other bills are pending before the Subcommittee, H.R. 34, H.R. 535 and H.R. ___ which direct the Secretary of the Interior to make corrections to the CBRS maps.

H.R. 34:

H.R. 34 was introduced by Congressman Porter Goss (R-FL) on January 6, 1999. The bill amends the boundary of Unit P19-P which is located on North Captiva Island, Florida. Unit P19-P was created in 1990. The "P" at the beginning of the unit designation indicates it is located in Florida. The "P" at the end of the unit designation indicates that the area is an otherwise protected area. Unit P19-P should be conterminous with Cayo Costa State Park. Unfortunately, the boundary line used by Congress to prepare the final unit map came from a map provided by the Department of the Interior which showed the "approximate boundaries of an undeveloped coastal barrier that is 'otherwise protected'...". This map did not correctly show the boundary of the state park.

The map prepared by the Department of the Interior was part of the 1988 report to Congress which included recommendations for additions and changes to the Coastal Barrier Resources System. That report did not recommend making otherwise protected areas part of the System. Therefore, the boundaries of the otherwise protected areas were not verified. Congress made the decision to include these areas as part of the System and to deny Federal development assistance to property in otherwise protected areas.

Unfortunately, the boundary line of Unit P19-P does not reflect the boundary of the Cayo Costa State Park. The boundary line includes privately owned property that was already being developed. This property was never "otherwise

protected". In 1994, Congress amended the boundary of Unit P19-P to remove a portion of the private property that had been incorrectly classified as otherwise protected. Regrettably, that amendment still failed to conform the boundary of Unit P19-P to the boundary of the otherwise protected state park land. H.R. 34 makes the boundary of the unit and the park conterminous. The area being removed includes houses that were built prior to its inclusion in the System.

H.R. 535:

H.R. 535 was introduced by Congressman Mike Castle (R-DE) on February 3, 1999. This bill makes a boundary change to unit DE-03P, an "otherwise protected area" that has been part of the System since the passage of the 1990 Coastal Barrier Improvement Act. The unit is located in Delaware on Cape Henlopen and was intended to be contiguous with the Cape Henlopen State Park boundary. At the time the map was prepared, the Fish and Wildlife Service was not aware that a portion of the Cape Shores development and land occupied by the Barcroft Company were included within the upper northeast edge of the unit boundary. Since there is evidence that the infrastructure for this development was begun prior to April 1990, these private lands do not meet the criteria for the CBRS and were included in the System in error.

The Fish and Wildlife Service has concluded that this modification to the boundary constitutes a technical correction. The Senate enacted a similar bill, S . 2351, introduced by Senator Joseph Biden (D-DE) in the 105th Congress. This legislation was not considered by the House of Representatives.

H.R. 1489:

Congressman Water B. Jones, Jr. (R-NC) is expected to introduce a bill to correct a mapping error in unit NC-03P. Private developed property was incorrectly labeled as part of an otherwise protected area. This property was bordered by the Cape Hatteras National Seashore. The Fish and Wildlife Service is expected to support this legislation.

Issues

- (1) How many acres will be removed from the System as a result of the enactment of the Goss, Castle and Jones Bills (H.R. 34, H.R. 535, and H.R. 1489)?
- (2) What evidence is there that the CBRS is working to protect barrier resources and prevent development of vulnerable property? How many Federal dollars have been saved?
- (3) What resources are necessary to work cooperatively with other agencies to create digital versions of the CBRS maps?
- (4) The National Flood Insurance Reform Act of 1994 required that the National Flood Insurance Program be self-financing. How has the Coastal Barrier Resources System influenced federal flood insurance expenditures and financing?
- (5) What is the status of the Administration report on Pacific coastal barrier resources?

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