

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

TESTIMONY OF GARY FRAZER, ACTING ASSISTANT DIRECTOR, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON RESOURCES, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS, OVERSIGHT HEARING ON THE COASTAL BARRIER RESOURCES SYSTEM.

May 6, 1999

Good morning Mr. Chairman. I am Gary Frazer, Acting Assistant Director for Ecological Services of the U.S. Fish and Wildlife Service. I appreciate this opportunity to testify in support of three technical correction bills of interest to the Department of the Interior. H.R. 535, H.R. 34, and H.R. 1489 direct the Secretary of the Interior to make technical corrections to Coastal Barrier Resources System maps of Cape Henlopen, Delaware, North Captiva Island, Florida, and Cape Hatteras, North Carolina respectively. In addition, we would like to present testimony regarding H.R. 1431, a bill to reauthorize the Coastal Barrier Resources Act. I will begin with the technical correction bills.

The Coastal Barrier Improvement Act of 1990, in addition to expanding the Coastal Barrier Resources System, for the first time designated some areas as "otherwise protected areas" or OPAs. This category of land gives additional protection to coastal barrier lands held for conservation purposes, such as parks, wildlife refuges, and bird sanctuaries.

H.R. 535, introduced by Representative Castle, addresses CBRA Unit DE-03P which was designated as an OPA with the passage of the Act in 1990. The purpose of this OPA was to provide additional protection to Cape Henlopen State Park in Delaware. H.R. 535, which we support, would **remove** from the OPA approximately 32 acres of privately owned land outside of the State Park and **add** approximately 245 acres of State Park land that was left out of the OPA in 1990.

At the time Unit DE-03P was established, the Service was not aware that a portion of the Cape Shores development and land occupied by the Barcroft Company were included within the Unit boundary, as if those lands were within the State Park, which they are not. To the best of our ability to determine it, the intent of Congress was to include only the State Park lands, not those adjacent private lands, in the CBRA Unit. On the other hand, information provided by the State Park confirms that the property proposed for addition to the OPA was held for conservation purposes within the boundaries of Cape Henlopen State Park in 1990, and was erroneously left out of the DE-03P when it was established. Modification of the boundary, therefore constitutes a valid technical correction that conforms the boundary of the OPA to the boundary of the State Park, which the Service and the Department support.

H.R. 34, introduced by Representative Goss, addresses a similar situation in CBRA Unit P19P at North Captiva Island, Florida. This Unit was also established as an "otherwise protected area" to give added protection to Cayo Costa State Park. H.R. 34, which we support, would remove from Unit P19P approximately 14 acres of privately owned land that is outside the boundaries of the State Park. Although the 14 acres are within the boundaries of the OPA as drawn on the official map of Unit P19P, the Department is of the opinion that the intent of Congress was to follow the State Park boundary when establishing the OPA boundary. The 14 acres in question are outside the boundary of the State Park, are not inholdings, and are not held for conservation purposes. Therefore, the Department supports the bill to modify the boundary of Unit P19P to reflect the State Park's official boundary.

Last year, the Service testified in opposition to virtually identical legislation. We did so based on the degree of development on these 14 acres in 1990, applying the criteria we use to determine whether an area of private land was already so sufficiently developed that a mistake was made when it and other lands were added to the Coastal Barrier Resources System. We now believe that is the wrong question to ask. In the case of private lands adjacent to a State Park that were included in an OPA along with the State park, we believe the controlling question is whether Congress

intended to include these private lands within the OPA. In this case, as with the Cape Henlopen State Park and with the Cape Hatteras National Seashore that I will also address in my testimony, all evidence we can find, both from the map itself and from the legislative history of the 1990 law, suggests that Congress intended only to include the public lands, not these adjacent private lands, in the OPA.

H.R. 1489, introduced by Representative Jones, addresses CBRA Unit NC-03P in Cape Hatteras, North Carolina. This CBRA Unit was established as an "otherwise protected area" to give additional protection to Cape Hatteras National Seashore. The Unit, as now mapped, includes some private property adjacent to, and landward of, the Cape Hatteras National Seashore boundary. It is the opinion of the Department that Congress intended to follow the National Seashore boundary when establishing the CBRA Unit boundary. It appears that when cartographers drew the original boundaries, they based the CBRA line on a National Seashore boundary depiction from a 1948 map that attempted to show the mean high water line, an indefinite and changing line. By doing this, privately owned beach houses were included within the CBRA boundary. Last month, Service personnel in coordination with the National Park Service cartographer, walked the locally accepted and monumented boundary of the National Seashore with a Global Positioning System and provided those coordinates to the National Park Service. H.R. 1489 would adjust the line to reflect the locally accepted and monumented boundary of Unit NC-03P. The Department supports H.R. 1489.

Let me now turn to reauthorization of the Coastal Barrier Resources Act and H.R. 1431. The Service supports reauthorization of CBRA. Coastal barriers are unique land forms that provide protection for diverse fish and wildlife habitats and serve as the mainland's first line of defense against the impacts of coastal storms and erosion. The coastal barrier ecosystem consists of unique fastlands, aquatic habitats, and shorelines. Fish and wildlife depend upon these coastal habitats for survival. For example, dunes and shorelines provide breeding and foraging areas for shorebirds and other protected species such as sea turtles. The aquatic habitats such as wetlands, tidal flats, swamps, marshes, lagoons, and estuaries provide essential breeding and rearing habitat for many waterfowl and fish species. Thus the Service has a keen interest in appropriate management of our coastal areas and in working cooperatively with other members of the Federal family and Congress to conserve and protect our valuable coastal resources.

To put our comments in context I will quickly review the role of the U.S. Fish and Wildlife Service with respect to CBRA administration. As authorized by Congress, the Secretary of the Interior is responsible for (1) maintaining the official maps of the Coastal Barrier Resources System, (2) conducting a review of the maps every 5 years to reflect changes to the System due to natural causes, (3) developing aerial photographic atlases of the System, (4) consulting with Federal agencies that propose spending Federal funds within the System, (5) ensuring Federal Flood Insurance Rate Maps accurately depict the coastal barrier Unit boundaries, and (6) preparing a report to Congress which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States.

Mr. Chairman, the Service appreciates your leadership in introducing a bill to reauthorize CBRA. H.R. 1431 allows voluntary additions to the System and calls for a digital mapping pilot project and two reports to Congress, one on OPAs that do not coincide with the definition in section 12 of the Act, and the other on the impact the Coastal Barrier Resources System has on rates of development. We would like to provide specific comments on H.R. 1431 and look forward to working with the Subcommittee as the bill moves through the legislative process.

Section 2 authorizes additions to the System at the request of a landowner. The Service recommends deleting from the bill the requirement that an addition to the System be a parcel at least 5 acres in size. Currently there are no such requirements for CBRA units, and in fact, the System already encompasses units in New York, Connecticut, Virginia, and the Virgin Islands that are slightly smaller than 5 acres. A tract smaller than 5 acres can be ecologically important. The Service would like to be able to judge each offering on a case-by-case basis to determine the merits of including the site in the system. For example, small isolated sites may not be desirable but small sites adjacent to already protected areas may justify inclusion.

Section 2 also calls for publication of a "map" of the added parcel in the Federal Register. We recommend instead that this section mirror the process set forth in Section 4(d) of the Coastal Barrier Improvement Act, which directs publication of only a notice of availability of maps depicting additions to the System.

With regard to the provision in Section 5 directing a study to verify the accuracy of OPA boundaries, the Service is

supportive of identifying and correcting all errors in the mapping. We believe that it is appropriate to remove any areas that were incorrectly included in the System and to add lands that were incorrectly omitted, such as in the case of Cape Henlopen. We are concerned, however, that the magnitude of the task will make it difficult to complete it within the designated time frame. To address boundary issues associated with the 274 OPAs, it would be necessary to work cooperatively and systematically with the owners of the conservation areas themselves. At a minimum this effort would take 2 years due to the considerable amount of coordination that would be required to verify conservation area boundaries with each landowner in every otherwise protected area.

Associated with this review of the accuracy of OPA boundary depictions, the Service recommends that Congress also strengthen our ability to efficiently administer the Act by authorizing the Service to make technical corrections to maps of "otherwise protected areas" in limited circumstances. In each of the three particular situations I have already discussed, involving Cape Henlopen State Park, Cayo Costa State Park, and Cape Hatteras National Seashore, Congress clearly intended that an OPA boundary coincide with a boundary of a Federal, state, local or other conservation area, but post-enactment investigation reveals that the map enacted by Congress does not accurately reflect the actual conservation area boundary. The authority we are recommending would enable the Service to resolve such situations by revising the map of the OPA administratively to make the boundaries coincide with conservation area boundaries as Congress intended. We would promulgate rules to define the circumstances for a valid technical correction based on errors in base map depictions of conservation areas and establish procedures to make those changes administratively. We believe that this streamlining of the technical correction process would be more efficient and provide better service to the public than requiring the enactment of legislation to make these types of corrections.

H.R.1431 also proposes a study of the impact of the CBRA System on development patterns. The General Accounting Office submitted a Report to the Committee on Environment and Public Works in July 1992 that assessed the effects of CBRA on development. While an additional study might be an interesting update, we believe the beneficial effects of CBRA are well established.

With respect to the current maps, the Service supports the provision in Section 5 of the bill that calls for a digital mapping pilot project. There would be many benefits to eventually converting the official CBRA maps from hard copy paper maps to a computer-compatible digital format suitable for display and use in a Geographical Information System or GIS. Modernizing the maps would give landowners, insurance providers, Federal agencies, and local planners a more precise, and accessible, tool for determining boundary locations. It would also be useful to make the lines and images available over the Internet, as would be possible if the maps were in a digital format. The pilot study would enable the Service to digitally capture the locations of a sampling of current boundary lines, store them in electronic files, and produce computerized GIS maps of the System units by overlaying the unit boundary lines on current digital photographs or satellite imagery. The pilot study would allow us to provide Congress with an accurate cost estimate of digitization and would give the Service and Congress a baseline of real-world information on the likely advantages and disadvantages of a possible conversion of the official maps to this new format.

With respect to Section 4, Authorization of Appropriations, the Department recommends maintaining previous authorization levels to carry out our responsibilities under CBRA. Our budget requests for the administration of CBRA have stayed below the authorization level in the past because of the many competing priority needs of the Service and the need to work within a balanced budget. However, if circumstances change in the future we would like to have the latitude to request additional funding to improve the manner in which we carry out our responsibilities under the Act.

In closing, Mr. Chairman, the Department will continue to work with Congress to ensure that the Coastal Barrier Resources System is accurate in its boundary descriptions, thereby ensuring fairness to adjacent landowners. The Service looks forward to working with this Committee and Congress to administer the Coastal Barrier Resources Act in a manner that protects lives and natural resources along the coasts of the United States.

I would be happy to answer any questions that you or members of the Subcommittee may have. Again, I thank you for giving the Fish and Wildlife Service the opportunity to testify.

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