

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

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Testimony Before the Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

on H.R. 34 and the Coastal Barrier Resources System

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Mr. Chairman, I am pleased to be here this morning to discuss H.R. 34, legislation I've introduced to make a technical correction to Unit P-19P of the Coastal Barrier Resources System, which is located on Upper Captiva Island, Florida. As the committee is well aware, the Coastal Barrier Resources System (CBRS) was created in 1982 and is designed to discourage development on barrier islands. It works by denying access to federal flood insurance, which, in many cases, effectively prohibits development on barrier islands. As a longtime resident and former mayor of Sanibel, Florida, which is a barrier island, I am keenly aware of the dangers and costs associated with development on barrier islands. For these reasons, I have been a strong supporter of the CBRS because it is a proven way to limit the loss of human life and property, save taxpayer dollars and preserve environmentally pristine areas.

Having said that, I don't have to remind my colleagues that the federal government has been known to make mistakes from time to time. In the CBRS, errors in mapping have resulted in landowners unfairly being denied flood insurance. I know that some are concerned about maintaining the integrity of the Coastal Barrier System and approach proposed changes with great care. Given my long support of the system and my strong belief in its usefulness, I share that concern and recognize the potential for mischief. However, the proposed change under consideration represents a clear mapping error. I think maintaining the integrity of the system goes both ways -- not only do we have to guard against the removal of lands that rightly should be in the system, but we should also remove lands that have been erroneously included. Failure to do so is unfair to the affected landowners. Furthermore, I believe that failing to make legitimate technical corrections erodes the credibility of the system itself, not to mention the federal government.

UNIT DESCRIPTION/BACKGROUND

Unit P-19P of the Coastal Barrier Resources System is located on Upper Captiva Island in Lee County, Florida. Unit P-19P was created in 1990, when Congress expanded the Coastal Barrier Resources System to include areas known as "Otherwise Protected Areas (OPA)." OPAs are lands that **have already been set aside for conservation purposes**, typically state parks and other lands managed for their environmental value. Examples of OPAs include national wildlife refuges, national parks and seashores, state parks and lands held by private organizations **for conservation purposes**. In the case of Unit P-19P, the otherwise protected area is Cayo Costa State Park. As you can see from the maps included with my testimony, the state park makes up the vast majority of Upper Captiva Island, with the exception of northern tip of the island, where there has been substantial development.

At the time of its creation in 1990, CBRS Unit P-19P consisted of Cayo Costa State Park and an entire 26 acre subdivision known as North Captiva Dunes. In 1990, there were 13 structures in place on these 26 acres. In 1994, Congress adjusted the boundaries of Unit P-19P with the aim of correcting the problem. At the time, it was my understanding that the correction would accomplish that goal. I believed that to the case until one of my constituents contacted me some two years later when he was denied federal flood insurance. In reviewing the correction, I can find no basis whatsoever to justify the adjustment that was made. As you can see from the CBRS map I've included, the correction divides the North Captiva Dunes subdivision in half, including the eastern portion in the CBRS, while excluding the western portion. After numerous discussions with the Committee and the Fish and Wildlife Service, I

have yet to find any justification for the 1994 correction.

As currently drawn, Unit P-19P consists of Cayo Costa State Park and approximately fourteen acres of the North Captiva Dunes subdivision. In 1990 (the time of inclusion), these 14 acres had, according to Lee County, three completed houses in place, as well as significant infrastructure.

CONGRESSIONAL INTENT

When it added OPAs to the system in 1990, Congress relied on maps created two years earlier. In 1988, the Department of Interior provided maps that showed the "approximate boundaries of an undeveloped coastal barrier island that is 'otherwise protected'..." The boundaries of the OPA were not verified for this map because at the time, OPAs were not part of the CBRS.

The failure to use precise maps has led to several mapping errors with regard to CBRS units that are "otherwise protected areas." This became clear shortly after the 1990 act adding OPAs to the system. In the 102nd Congress, on November 16, 1991, then Chairman Walter Jones of the Merchant Marine and Fisheries Committee introduced H.R. 3972, which directed the Secretary of Interior to make minor and technical corrections to coastal barrier maps "to ensure the accurate depiction...of the boundaries of otherwise protected areas (as the term is used in the Act), as those areas existed on the date of the enactment of the Coastal Barrier Improvement Act of 1990." Clearly, it was not the intent of Congress to include areas outside the existing OPA boundaries in the CBRS.

It is implausible to argue that Congress intended to include lands in OPA units that were privately held and under development. While there are, indeed, OPA units that contain privately held land, those lands have to be held for conservation purposes, as outlined in the 1990 law. Since the sole purpose of P-19P is to incorporate an "otherwise protected area" in the CBRS, the appropriate boundary for Unit P-19P is the boundary of the state park.

PAST FISH AND WILDLIFE SERVICE ACTION ON THE OPA ISSUE

In addition to Congress, the Fish and Wildlife Service has also recognized the mapping errors associated with the 1990 Act adding OPAs to the system. While it deals with a separate CBRS Unit, I believe a July 16, 1997 Fish and Wildlife Service letter helps shed some light on the decision we face with regard to Unit P-19P. Discussing CBRS Unit FL-35P on Pumpkin Key in Florida, the FWS concluded that:

Unit FL-35P is an 'otherwise protected area' a designation that was intended to include lands held for conservation purposes. The Unit boundary runs through a portion of the Ocean Reef Harbor Course South Development, which was in existence at the time of the 1990 Act. It appears that nine residences were included within the boundaries of Unit FL-35P. The area in question is not held for conservation purposes, nor is it an inholding within conservation lands. The Service has received certificates of occupancy and plat maps from Monroe County that the area in question was developed at the time it was mistakenly included in the System. Modification of the boundary would therefore constitute a valid technical correction that the Service and the Department can support.

The situation in Unit FL-35P is directly comparable to Unit P-19P on Upper Captiva Island: the boundaries of an OPA Unit were inappropriately drawn to include part of a privately held area that was substantially developed at the time of inclusion. In that case, the Fish and Wildlife Service supported the effort to make the boundaries of the CBRS coterminous with the OPA. I am pleased that the FWS is also supporting my efforts to make the same correction to Unit P-19P.

LEVEL OF DEVELOPMENT

Having established that these 14 acres were incorrectly included in Unit P-19P in the first place, it also bears noting that these lands are unsuitable for inclusion in the system altogether. These lands are substantially developed and meet established Fish and Wildlife Service criteria for exclusion.

Density: In determining whether an area is developed, FWS applies a density standard of one unit per five acres. H.R. 34 would remove 14 acres from Unit P-19P. Lee County has provided information that 3 houses were in place on those

14 acres at the time of inclusion in 1990, which meets the FWS standard.

Infrastructure: The secondary criteria FWS uses to determine whether an area is developed to the point it should be excluded from the CBRS is the level of infrastructure present at the time of inclusion. A full complement of infrastructure includes paved roads, utilities, water and sewer.

(1) Roads: According to Lee County, the roads in this area were in place by 1972. None of the roads on Upper Captiva are paved and there are no cars on the island. While the standard criteria is "paved roads," the Fish and Wildlife Service has made exceptions in instances where paved roads are not the norm. For example, in the case of Unit FL-35P on Pumpkin Key in Florida, the FWS concluded that it would be "inappropriate to expect a small island without bridge or ferry access to include paved roads to be considered developed. However, an island of similar size and type, with bridge access or docking facilities for a small ferry, would need paved roads to be considered developed." Upper Captiva Island does not have bridge or ferry access and therefore, using FWS' past actions, it would be inappropriate to deny infrastructure on that basis.

(2) Utilities: According to the Lee County Electric Cooperative, electrical lines were first permitted in January of 1983 and in place before these 14 acres were included in the CBRS in 1990.

(3) Water/Sewer: According to FWS regulations, the "ability to use on-site wells and/or septic systems on each later building site in a development, when legally authorized and the normal practice in the vicinity, will constitute water supply and sewage infrastructure since they can be drilled and/or installed concurrently with the construction of the structure (47 FR 35696 *35712). Since all properties on Upper Captiva are serviced by well water and septic tanks, these 14 acres meet the FWS criteria.

CONCLUSION

The 14 acres H.R. 34 proposes to remove from the CBRS meet all the major FWS criteria for exclusion. More importantly, the initial inclusion of this area was in error since the boundaries of the CBRS unit are not coterminous with the otherwise protected area for which the unit was created.

I am hopeful the committee will agree that the change proposed in H.R. 34 is a technical correction that should be made expeditiously. These property owners have found themselves unable to obtain federal flood insurance for far too long for what amounts to a simple error on the part of the federal government.

Once again, Mr. Chairman, let me thank you for the opportunity to appear today in support of H.R. 34.

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