

WRITTEN TESTIMONY OF DR. BENJAMIN TUGGLE, ACTING SPECIAL ASSISTANT TO THE DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES AND OCEANS REGARDING H.R. 3552 TO REAUTHORIZE THE COASTAL BARRIER RESOURCES ACT

NOVEMBER 8, 2005

INTRODUCTION

Good morning, Chairman Gilchrest, Ranking Member Pallone, and members of the Subcommittee. I am Dr. Benjamin Tuggle, Acting Special Assistant to the Director of the U.S. Fish and Wildlife Service (Service). Thank you for this opportunity to testify today on H.R. 3552, a bill to reauthorize and amend the Coastal Barrier Resources Act (CBRA).

The Administration strongly supports CBRA and its reauthorization through H.R. 3552. Mr. Chairman, we appreciate your leadership in introducing H.R. 3552, which would reaffirm support of CBRA and set the stage for modernizing the maps that currently depict the John H. Chafee Coastal Barrier Resources System (System). We also greatly appreciate your strong support of CBRA. For the past 23 years, CBRA has removed most Federal subsidies that encourage the development of biologically important, and hurricane prone, coastal barriers designated within the System. My testimony today will focus on the importance of map modernization through the reauthorization of CBRA, and on the specific provisions of H.R. 3552.

For the past two months, the Nation has been reacting to the effects of Hurricanes Katrina and Rita on the Gulf of Mexico coast, and most recently hurricane Wilma in Florida. The effects of these storms have been devastating, and as a result, the Administration, as well as the people of the Nation, mobilized an unprecedented relief effort. While the hurricanes are not the focus of this hearing, they provide a grim reminder of why CBRA was enacted and may help inform efforts to update and reauthorize CBRA. The driving purpose of CBRA is to take the Federal Government out of the business of encouraging people to build infrastructure and homes on relatively undeveloped and biologically rich coastal barriers, which are subject to chronic erosion and the devastating impacts of natural disasters.

Coastal barriers on the eastern part of the United States and in the Gulf region are elongated, narrow landforms that are located at the interface of land and sea. Most coastal barriers are composed of sand and other loose sediments. Tidal waters and winds continuously erode these sands from one place and redeposit them elsewhere. These dynamic ecosystems provide essential spawning, nesting, nursery, and feeding areas for a variety of biologically, commercially and recreationally important fish and wildlife species including migratory birds, shorebirds, finfish, shellfish, and sea turtles.

Because of their location and their dynamic nature, coastal barriers protect the mainland, lagoons, wetlands, and salt marshes from the full force of wind, wave, and tidal energies. Coastal communities depend on these natural buffers to protect them from the full impact of severe storms. The location and dynamic nature of coastal barriers make building on them risky. Development of these areas not only puts property owners at risk of losing their homes and lives, but also disrupts the natural movement of the barriers, harming fish and wildlife habitat and often increasing natural erosion processes. Despite their instability and the risks associated with building on narrow spits of sand, the aesthetic and recreational lures of coastal barriers have enticed people to develop many of these areas. In many cases, this development is encouraged by various types of Federal financial assistance, including, in some instances, the availability of Federal flood insurance.

With the passage of CBRA in 1982 Congress recognized that certain actions and programs of the Federal Government have historically subsidized and encouraged development on coastal barriers and resulted in the loss of natural resources, threats to human life, health, and property, and the expenditure of millions of tax dollars each year. To remove the Federal incentive to develop, CBRA designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of a System, and made areas within that System ineligible for most new Federal expenditures and financial assistance. CBRA advanced the common sense approach that risk associated with new private development on relatively undeveloped coastal barriers should not be underwritten by the Federal taxpayer.

Through its unique free-market approach to conservation, CBRA has been instrumental in ensuring that the Federal Government does not encourage the development of these high-risk and biologically important coastal barrier habitats. For the majority of the 3.1 million acres currently included in the System (including the class of units called "otherwise protected areas" or OPAs), CBRA's purpose has been fulfilled by removing an incentive to develop without regulating development – development can still occur provided that private developers or other non-Federal parties bear the full cost of these activities. According to a 2002 U.S. Fish and Wildlife economic report, CBRA will save approximately \$1.3 billion in Federal dollars between 1982 and 2010.

NEED FOR JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM MAP MODERNIZATION

CBRA has been successful over the past two decades, but it can do even more. CBRA is unusual in that it does not define the specific areas included in the System or OPAs via legislative language. Instead, the law references a series of maps which depict the specific boundaries of individual System units and OPAs. These maps are maintained by the Service, through the Department of the Interior. Congress limited the Department's authority to modify the System boundaries to a 5-year review process, which solely considers changes that have occurred to the System by natural forces. Aside from the five-year review, only Congress, through legislation, can modify the boundaries to add or remove land from System units or OPAs.

The existing series of more than 600 maps that depict the System, including OPAs, were created more than 15 years ago and are in need of modernization. They are outdated technologically, and therefore difficult to use. In addition, because of the mapping technology used to create the existing series of maps, boundaries are sometimes imprecise or inaccurate. System unit and OPA boundaries may not align precisely with the geomorphic features, cultural features, or property boundaries they were intended to follow.

The Service receives numerous requests from landowners and developers who seek to remove private land from System units and OPAs so that they can develop the land with Federal subsidies. Often these "technical correction" requests are based on claims that the maps are inaccurate, or contain errors. We address these individual cases in an unbiased and transparent way by objectively applying standard review criteria. When a change is warranted, the Service works with interested stakeholders and Congress to enact a comprehensively revised map using the high-quality, state-of-the-art digital mapping tools that are now available. This case-by-case, reactive review process is lengthy (often taking years to complete) and resource intensive (consuming a significant portion of the limited resources available for administering the program).

Additional challenges posed by the current System maps are the difficulties in making timely property determinations regarding whether a particular property is within a System unit or an OPA, and timely CBRA "consistency consultations" regarding whether Federally-funded infrastructure projects are within a System unit or OPA. As the rebuilding phase begins along the Gulf of Mexico and Florida coasts following the devastation of Hurricanes Katrina, Rita and Wilma, the Service anticipates hundreds of requests from the Federal Emergency Management Agency (FEMA), Army Corps of Engineers, and other agencies concerning whether specific properties and infrastructure are affected by CBRA. The Fish and Wildlife Service will process these requests as quickly as possible, however, due to the expected high number of requests and the use of maps that may be outdated, some of these CBRA consistency consultations and other property determinations may take longer than normal to process. Currently, it takes the Service several months to respond to FEMA's National Flood Insurance Program concerning whether a certain property is affected by CBRA. CBRA consistency consultations for infrastructure projects can take even longer.

H.R. 3552 would help address these challenges by moving away from the use of the paper maps that depict outdated geomorphic and cultural features and toward a system of digital maps that more accurately depict current features on aerial photography. Modernizing the System and OPA maps using digital technology would also achieve the following three important goals.

- Improve customer service. Digital maps would give landowners, developers, insurance providers, Federal agencies, non-governmental agencies, and State and local planners a more precise and accessible tool for determining boundary locations, making investment decisions, issuing flood insurance policies, managing proposed projects in coastal areas, and providing disaster relief following a hurricane. Digital maps could be accessible via the internet which would improve government efficiency by allowing for faster customer service.
- Conserve natural resources. Digital maps would also help conserve natural resources by enabling the Service to work with Federal, State, local, and non-governmental entities to more fully inform their conservation and planning efforts with the information regarding CBRA's Federal funding prohibitions.
- Secure the future of the System. Comprehensive map modernization would ensure the long-term integrity of the System, including OPAs, by allowing the Service to research the intent of each boundary, produce draft digital maps that reflect that intent, conduct a public review of the draft digital maps, create robust administrative records that document the reasons for the location of each boundary, and present Congress with final recommended maps for its consideration.

H.R. 3552 TO REAUTHORIZE CBRA AND MODERNIZE THE JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM MAPS

Let me now turn to H.R. 3552, which would reauthorize CBRA through fiscal year 2010 and modernize the maps of the System, including OPAs. H.R. 3552 directs the Secretary of the Interior (Secretary) to finalize the Digital Mapping Pilot Project, create digital maps for the remainder of the System and OPAs, and establish a grant program for States to

identify eligible coastal barriers to add to the System and OPAs. We support H.R. 3552 but have concerns with some parts of the bill including Constitutional concerns with sections 2 and 3 and budgetary concerns with establishing a new grant program under section 4. We do have the following specific comments that we believe would improve the legislation. We look forward to working with the Subcommittee to address our concerns as the bill moves through the legislative process.

Congress recognized the challenges associated with the outdated paper System maps when it last reauthorized CBRA. The Coastal Barrier Resources Reauthorization Act of 2000 directed the Secretary to conduct a Digital Mapping Pilot Project that would produce draft digital maps of between 50 and 75 CBRA areas and estimate the cost and feasibility of completing digital maps for all CBRA areas. We are pleased to report that the pilot project maps and report to Congress are nearing completion. Section 2 of H.R. 3552 authorizes \$500,000 for each of fiscal years 2006 through 2007 for the Secretary to conduct a public review of the draft digital maps created under the pilot project and prepare a report to the Congress that contains final recommended pilot project maps. The Administration is supportive of a public review process that would allow all interested parties to review and comment on the draft digital maps prepared by the Service as part of the pilot project.

Section 3 of H.R. 3552 directs the Secretary to create draft digital maps of all the System units and OPAs that were not included in the pilot project, conduct a public review of those maps, and prepare a report to Congress that contains the final recommended maps. The Administration strongly supports map modernization for the entire System, including OPAs. The Service has learned many lessons through the pilot project and developed sound research and mapping protocols that will facilitate the efficient digital mapping of the remainder of the System, including OPAs. The creation of draft digital maps for the System and OPAs is a complex process involving: (1) digitization of the existing boundary on geographically-referenced aerial photography; (2) extensive research of historical records and data to determine the intent of the existing boundary (e.g., to follow a geomorphic feature or a property boundary); (3) compilation and application of various data to determine the appropriate placement of the proposed new boundary; and (4) creation of a robust administrative record describing the reasons for the recommended boundary placement.

Section 4 of H.R. 3552 directs the Secretary to establish a grant program that would provide funding to States for the purpose of identifying, assessing, and recommending additional eligible coastal barriers for inclusion as System units or OPAs. At this juncture, almost half of the 23 States and territories that currently contain System units or OPAs are working in partnership with the Service in remapping State-owned and State-managed OPAs as part of the pilot project or as part of case-by-case technical correction reviews of individual System unit and OPA boundaries. Successful data sharing and collaborative partnerships with several States have been established to date. These partnerships could serve as examples for agreements between the Service and other States and territories to identify relatively undeveloped coastal barriers and associated aquatic habitats that are not yet included in the System or OPAs. In light of the need to allocate limited funding resources for Administration priorities such as fighting the War on Terror, strengthening our homeland defenses, and sustaining the momentum of our economic recovery and in light of recent funding needs required to respond to the unprecedented devastation caused by Hurricane Katrina, spending restraint will be necessary in other areas to stay on track to cut the deficit in half by 2009. In this light, establishing a new grant program that is not consistent with the President's budget is not recommended by the Administration.

The Administration does recommend that if section 4 remains in the bill that the references to "States" in section 4 be modified to include "territories" as Puerto Rico and the Virgin Islands contain System units and OPAs. Furthermore, we recommend that the inventory criteria in Section 4(b)(3) and (4), which prescribe minimum acreage and shoreline requirements, be struck from the bill. If an area meets the criteria set forth in section 4(b)(1) and (2) and is contiguous to an existing System unit or OPA, it should not be ineligible for inclusion on the comprehensive state-wide inventory because of minimum acreage and shoreline requirements.

Section 5 of H.R. 3552 authorizes \$3,000,000, to the Secretary for carrying out the Act for each of fiscal years 2006 through 2010. Past budget requests for the administration of CBRA have been below the authorization level because of the many competing priority needs of the Service and the need to work within a balanced budget. To date, the Service has successfully carried out its responsibilities under the Act within these budget requests.

Finally, we note that sections 2(c)(2) and 3(c)(3) would require the Secretary to make recommendations regarding potential legislative actions in reports to Congress. We have been advised that these requirements raise constitutional concerns under the Recommendations Clause, Article II, Section 3, of the Constitution.

CONCLUSION

In closing, the maps that currently depict the John H. Chafee Coastal Barrier Resources System are in need of modernization to expand electronic government, improve customer service, and build upon existing tools used by our partners to conserve the Nation's coasts. Reauthorizing and supporting CBRA reaffirms the principle that it is not appropriate for the Federal Government to provide incentive for people to build in dangerous areas. Removing the Federal incentive for

construction in areas unsuitable for development costs far less than relying on post-storm emergency response, clean up, and reconstruction efforts. It also helps conserve important coastal habitat by resulting in less intensive development.

Thank you, Mr. Chairman, for the opportunity to appear before you today and for your leadership in reauthorizing CBRA through H.R. 3552. This legislation offers an excellent opportunity to modernize the maps and preserve the long-term integrity of the System and OPAs. We look forward to working with you on reauthorizing this important law. I will be glad to answer any questions.