



In Reply Refer To:  
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## United States Department of the Interior

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Peter R. Blum, Chief  
Planning Division, Philadelphia District  
U.S. Army Corps of Engineers  
Wanamaker Building  
100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390  
ATTN: Ms. Beth Brandreth

AUG 09 2016

Re: Coastal Barrier Resources System Determination for the use of the Hereford Inlet as a sand borrow area for the Townsends Inlet to Cape May Inlet beach restoration project, Borough of Stone Harbor, Cape May County, New Jersey

Dear Mr. Blum:

This response is in reference to your July 28, 2016 letter, in which you formally request an applicability determination of the Coastal Barrier Resources Act (CBRA, 16 U.S.C. 3501 *et seq.*) relative to the referenced project. The U.S. Fish and Wildlife Service (Service) reviewed the referenced area for the presence of John H. Chafee Coastal Barrier Resources System (CBRS) units and applicability of an exception proposed by the U.S. Army Corps of Engineers, Planning Division (Corps) to use the sand within the Stone Harbor CBRS Unit NJ-09 for a beach re-nourishment outside the Unit.

In your letter, you request concurrence from the Service for the exception in Section 6(a)(6)(G) of CBRA for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system” within the CBRS that are also consistent with the purposes of the CBRA (*i.e.*, to minimize loss to human life, wasteful Federal expenditures, and damage to natural resources). You also state that, in the late 1990s, the Service approved the use of the Hereford Inlet borrow area for the beach re-nourishment of Stone Harbor and that the subject borrow area was also utilized for this purpose by the Corps in 2011 and 2013.

### **AUTHORITY**

The CBRS was established by CBRA in 1982 and consists of geographic units along the Atlantic, Gulf of Mexico, and Great Lakes coasts that are delineated in a series of maps. Congress enacted CBRA to minimize the loss of human life, wasteful Federal expenditures, and

damage to natural resources on undeveloped coastal barriers. CBRA accomplishes these goals by prohibiting most Federal expenditures that promote development within the CBRS. CBRA does not prevent development; rather, it restricts Federal subsidies that encourage development within these hazard-prone and ecologically sensitive areas. CBRA imposes no restrictions on development conducted with non-Federal funds.

The Service is responsible for administering CBRA, which includes: maintaining the official maps of the CBRS; consulting with Federal agencies that propose spending funds within the CBRS; and making recommendations to Congress regarding whether certain areas were appropriately included in the CBRS. Aside from three minor exceptions, only new legislation can modify the CBRS boundaries to add or remove land. These exceptions include: (1) the CBRA five-year review requirement that solely considers changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess Federal property to the CBRS.

These comments are provided as technical assistance only; individual Federal agencies have the responsibility to independently ensure compliance with CBRA. Additionally, these comments do not constitute consultation for any project pursuant to Section 7 of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) or comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*); nor do they preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

## **SERVICE DETERMINATION**

The CBRA and its amendments prohibit most Federal expenditures that tend to encourage the development or modification of coastal barriers. Examples of prohibited Federal assistance within CBRS Units include subsidies for road construction, channel dredging, and other coastal engineering projects. Examples of allowable Federal assistance within CBRS Units include military activities essential to national security; exploration and extraction of energy resources; maintenance of existing Federal channels; and maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities (16 U.S.C. 3505).

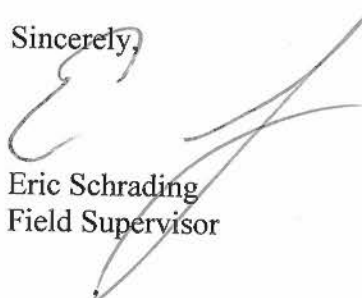
Section 5 of the CBRA prohibits most new Federal expenditures or financial assistance within System units of the CBRS. If the proposed project or action is within or will affect a System unit, the lead Federal agency must, in consultation with the Service, determine whether or not any of the Section 6 exceptions under CBRA are applicable (16 U.S.C. 3505). If none of CBRA's exceptions are applicable, the proposed project should not proceed with Federal funding. The Service's response to a consultation request is in the form of an opinion only. The funding agency is responsible for complying with the provisions of CBRA. If the activity qualifies for an exception under Section 6 of the CBRA, "the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available" within the CBRS.

It is the Service's understanding that the late 1990s approval of Hereford Inlet as a borrow area was based on restoring Stone Harbor Point which was within the CBRS Unit NJ-09 and had almost completely eroded away because the Stone Harbor South Jetty was significantly precluding sand from down-drifting to Stone Harbor Point. This activity met one of the purposes of the CBRA (*i.e.*, prevent and restore damage to fish, wildlife, and other natural resources associated with a CBRS Unit). As part of this project, the jetty was breached in part to allow sand to drift and resume feeding the Stone Harbor Point. Subsequent Federal expenditures in 2011 and 2013 to dredge sand from Hereford Inlet (including a series of federally-funded vibracore studies within the inlet) were carried out by the Corps without formally consulting with the Service on whether such Federal expenditures were consistent with the CBRA on an individual basis. Most coastal engineering efforts serve to protect and maintain human residential, recreational, and urban development that are artificially stabilized by beach re-nourishment projects outside CBRS Units, in some cases at the expense of important resources within CBRS Units.

The Corps proposed that the use of sand from Stone Harbor CBRS Unit NJ-09 would meet the exception in Section 6(a)(6)(G) of the CBRA for "nonstructural projects designed to mimic, enhance, or restore a natural stabilization system" within the CBRS that are also consistent with the purposes of the CBRA (*i.e.*, to minimize loss of human life, wasteful Federal expenditures, and damage to natural resources) since no sand will be directly placed on shorelines within Stone Harbor CBRS Unit NJ-09. The Department of the Interior's Office of the Solicitor carefully reviewed this issue in the past and advised the Service that the aforementioned exception Section 6(a)(6)(G) of the CBRA applies only to natural systems within a CBRS Unit and not to artificial systems outside a CBRS Unit (see enclosure). Likewise, minimizing the loss of human life; wasteful expenditures of Federal revenues; and damage to fish, wildlife, and other natural resources must be associated with activities within CBRS Units. Therefore, the proposed action (Federal expenditure) and the proposed exception by the Corps are not consistent with the provisions of the CBRA.

Please contact Carlo Popolizio at (609) 382-5271, if you have any questions regarding these comments or require further assistance regarding the CBRA. Ms. Cindy Bohn, Regional CBRA Coordinator for the Northeast and Southeast Regions may be reached at (404) 679-7122.

Sincerely,



Eric Schradling  
Field Supervisor

Enclosure

cc: Dana\_Wright@fws.gov  
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