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BEFORE THE HOUSE RESOURCES COMMITTEE,
SUBCOMMITTEE ON FISHERIES AND OCEANS
REGARDING H.R. 138, H.R. 479, H.R. 1656, H.R. 3280, AND H.R. 4165**

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Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to present the Administration's testimony on H.R.138, H.R. 479, H.R. 1656, H.R. 3280, and H.R. 4165, bills that relate to the Coastal Barrier Resources Act (CBRA). I am Dr. Mamie Parker, Assistant Director for Fisheries and Habitat Conservation, U.S. Fish and Wildlife Service (Service).

The Administration strongly supports CBRA and its unique free-market approach to conservation. Coastal barriers provide invaluable services that are the foundations of a strong economy and healthy environment. They provide habitats that support a wide variety of fish and wildlife, protect mainland communities from severe weather events, function as popular vacation and recreation destinations, and support local economies.

Importance of Coastal Habitats

The importance of coastal barriers and other coastal habitats such as wetlands was thrust into the national spotlight this past year when Hurricanes Katrina and Rita struck the Gulf Coast. The hurricane damage these natural areas absorbed helped lessen the danger to people and structures located further inland. While the damage remained significant, it could have been much worse without the storm buffering effects of the remaining coastal barriers and wetlands.

Before continuing on the specific subject of CBRA, I would briefly like to focus on the impacts of Hurricanes Katrina and Rita along the Gulf Coast. The tragic impact of these hurricanes is but the latest example of the importance of maintaining healthy coastal habitat. The hurricanes also underscore how dangerous and dynamic these areas can be . Tulane law professor Oliver Houck is attributed with calling the vast wetlands that once occurred between New Orleans and Grand Isle, Louisiana, as "horizontal levees," as important, or more so, than the vertical levees built by man. It has long been recognized that oyster reefs, coral reefs, marshes, barrier islands and bottomland hardwood wetlands serve to dull the teeth of storms and their potential damage. In the Gulf Coast, for example, research has shown that for every 2.7 miles a hurricane travels over these natural structures, the resulting storm surge is reduced by one foot (see U.S. Army Corps of Engineers, 1961 Interim Survey Report: Mississippi River Delta at and Below New Orleans, Louisiana. New Orleans District, December 29, 1961). Historically, a solid mass of wetlands, oyster reefs and slowly meandering bayous wove their way for nearly 100 miles from New Orleans south to the Gulf of Mexico. Over the past half century, that has changed.

In the 1970's and 1980's, Louisiana coastal wetlands were being lost at a rate of up to 48 square miles per year. That loss has now been "reduced" to 24 square miles per year, a rate that simply cannot be sustained. Indeed, the trend needs to be reversed. As we move forward in addressing

the significant challenges that face us in rebuilding the Gulf Coast, we must keep in mind that while levees protect people, coastal barriers and wetlands protect both people and levees. Wetland restoration must be a part of any rebuilding plan if we are to address future risks to human safety.

In the subsiding environment of coastal Louisiana, conversion of wetlands to open water has resulted in large areas of a system that no longer maintain their vertical elevation and vegetative cover. Unfortunately, those subsiding and "deeper" large areas of the Louisiana coastal ecosystem more efficiently transmit storm surges than would shallower, healthy vegetated areas that have maintained their elevation. Louisiana coastal marshes are geologically among the youngest lands in the United States. Historically fed by sediment laden waters from the Mississippi River, these marshes were in a continual building process. Since construction of the mainline Mississippi and Atchafalaya River levee system, however, the rich soils from over 30 percent of the U.S. drainage are now being deposited off the edge of the continental shelf at a rate exceeding 10 tons per second.

How to restore a semblance of the depositional functions of the river to the marshes will pose significant challenges, but challenges that must be met nonetheless. These challenges should be faced head on with the welfare of the American people as the constant goal. The effort, however, must be collaboratively orchestrated between the federal, state and local governments, and must include academia and professional organizations and societies. No long term solution can be expected from any single entity, but must occur through cooperation and collaboration from a myriad of sources.

Like wetlands, protection of coastal barriers is also important. Coastal barriers are subject to chronic erosion and powerful storm events that make them dangerous to build and live on. By limiting Federal subsidies that serve to encourage risky development on storm-prone coastal barriers, CBRA seeks to minimize the loss of human life; reduce wasteful expenditures of Federal revenues; and protect fish and wildlife and their habitats.

Background

Mr. Chairman, before discussing the individual bills that are the subject of this hearing, I would like to express thanks on behalf of the Service for your leadership on, and strong support for, the reauthorization of CBRA and for modernizing the maps of the John H. Chafee Coastal Barrier Resources System (CBRS).

The majority of the bills on today's agenda would revise existing CBRS map boundaries to remove privately owned land from units of the CBRS. As the Service testified on November 20, 2003, before this Subcommittee, there are two types of CBRS units: otherwise protected areas (OPAs) and full System units. To determine whether the revisions suggested in the individual bills constitute appropriate technical corrections, the Service conducted objective reviews of the administrative records, maps, and information submitted by interested parties for each System unit and OPA that is the subject of these bills.

When conducting such reviews, the Service considers several factors, including the development status of the unit when it was included in the CBRS by Congress. The Coastal Barrier Resources Reauthorization Act of 2000 codified criteria for reviewing a unit's development status at the time of designation to determine whether an area was undeveloped and appropriately included in the CBRS. The criteria include density of development and level of infrastructure present at the time of inclusion. The density criterion is such that the density of development was less than one structure per five acres of land above mean high tide. If an area was below this threshold, it was considered "undeveloped" and appropriate for inclusion in the CBRS. The infrastructure criterion is such that it was considered developed if there was: (1) a road, with a reinforced road bed, to each lot or building site in the area; (2) a wastewater disposal system sufficient to serve each lot or building site in the area; (3) electric service for each lot or building site in the area; and (4) a fresh water supply for each lot or building site in an area.

Another factor considered by the Service when determining whether map revisions constitute appropriate technical corrections is whether the original intent of the boundaries is reflected on the maps; i.e. whether the lines are precisely where they were intended to be by Congress. For example, in some cases, the administrative record shows that lines were intended to follow roads, property boundaries, or natural features. Because of the limitations of the technology used to draft CBRS maps over 15 years ago, the Service has uncovered areas where CBRA lines don't follow the features they were intended to follow. In such cases, and dependent on available resources, the Service works with Congress to draft revised maps for the units using modern, digital technology, that accurately reflects the original intent of the unit boundaries. Aside from the five-year review process which allows the Department of the Interior (Department) to modify System unit boundaries to reflect natural changes (erosion and accretion), only Congress, through legislation, can modify boundaries to add or remove land from the CBRS.

Otherwise Protected Areas

Three bills on the agenda today, H.R. 138, H.R. 479, and H.R. 4165, make technical corrections to OPAs of the CBRS. In general, OPA boundaries are intended to follow the boundaries of lands held for conservation or recreation. OPAs provide an additional layer of protection to these areas, including privately held inholdings, by limiting the availability of federal flood insurance.

Before discussing the bills, I will provide a brief explanation of the purpose of OPAs and the history of their creation.

CBRA specifies that areas established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes, should not be included within the CBRS as a System unit. As part of a 1988 Report to Congress mandated by CBRA, the Department delineated recommended changes to existing CBRS units. The report also identified areas that were considered "otherwise protected" lands. These areas were delineated on the maps for information purposes only, and the Department did not recommend adding these areas to the CBRS unless they were made available for development. Also in this report, the Department recommended that all privately

owned property that is within, but is not a part of, these protected areas (i.e., inholdings of the protected areas) be included in the CBRS.

When it enacted the Coastal Barrier Improvement Act of 1990 (CBIA), Congress amended CBRA to place flood insurance prohibitions on many of the protected areas identified in the 1988 report, creating a new category of CBRS unit -- OPAs. Congress used the draft maps in the 1988 report to delineate the OPAs that were enacted by the CBIA.

The Service believes that Congress created OPAs for two primary reasons: (1) to ensure that the land will not be eligible for Federal flood insurance if it is ever sold or otherwise made available for development; and (2) to ensure that the restrictions on Federal flood insurance apply to privately owned inholdings within the protected area.

Most of the OPA boundaries on the existing CBRS maps don't precisely match the underlying conservation area boundaries they were intended to follow due to the outdated cartographic techniques and base maps used to originally delineate these areas. The inaccuracy of the boundaries is due to the rudimentary (by today's standards) mapping tools used to draft the boundaries in 1990, as well as the outdated base maps, which in many cases were decades old. Often private property owners who live next to protected areas were inadvertently included in OPAs, and are therefore ineligible for Federal flood insurance. In addition, because of the inaccurate maps, protected lands that should be a part of OPAs are often not included within OPA boundaries. The Service has worked with Congress to address the inaccuracies in OPA boundaries using digital technology on a case-by-case basis through the technical correction process, as well as through our work on the Digital Mapping Pilot Project.

Legislation

I will now discuss the bills individually that would affect certain OPAs, beginning with H.R. 138.

H.R. 138, GA-06P, Jekyll Island

H.R. 138 addresses the Jekyll Island Unit GA-06P, located in Glynn County, Georgia. GA-06P was designated as an OPA by the CBIA and includes Jekyll Island and marshland to the west of the island. H.R. 138 is intended to replace the existing GA-06P map with a revised map that removes certain areas of Jekyll Island so that residents of Jekyll Island can develop and redevelop their properties without losing their Federal flood insurance.

Jekyll Island is owned by the State of Georgia and has been managed by the Jekyll Island Authority (JIA) since 1950 as a historic district, tourist attraction, and residential area. There are more than 800 private structures on Jekyll Island, most of which were constructed in the 1960s and 1970s. There are also several non-residential structures on the island, including a conference center, several hotels, golf courses, and a water park. Georgia law imposes a 35 percent development limit on the island's land above mean high water and the JIA has identified 65 percent of the island as ineligible for development.

Following the enactment of the CBIA in 1990, Federal flood insurance could not be provided for any new construction or substantially improved structures located within GA-06P. All existing structures maintain their Federal flood insurance until that structure is substantially damaged and a claim is paid, or the structure is substantially improved. The Service was contacted by the JIA in 2003. The JIA questioned why the island is located within an OPA. Congressman Kingston subsequently requested that the Service research the situation. We conducted a review of GA-06P to determine the original intent of the designation of the OPA.

This is a unique situation. Unlike most OPAs, Jekyll Island is not managed solely for conservation or recreational purposes. Jekyll Island contains significant development that took place before GA-06P was designated as an OPA in 1990. The map enacted by Congress in 1990 clearly depicts hundreds of structures. Also, Jekyll Island was cited as an example of a developed recreational area in a 1978 Report to Congress from the Department:

> "Jekyll Island is entirely a State park. Although State legislation limits development to no more than 35% of the island's land area, much of its waterfront and adjacent lands have been heavily developed. The commercial enterprises and private residences occupy State park land under 70-99 year leases. The island has some 1,200 permanent occupants. In the eagerness to develop the island, 200 acres of dunes and 175 acres of marsh were destroyed. There has been little effort to protect the island's natural system, which is normally the practice in State parks (including other mainland State parks in Georgia)." *Report of the Barrier Island Work Group, DOI, Heritage Conservation and Recreation Service 12/18/1978*

Despite the existing development, Congress chose to designate the area as an OPA, including the existing development on the island.

Because of the unusual facts of this case, the Service will not oppose a change to this OPA.

H.R. 479, FL-95P, Grayton Beach

H.R. 479 addresses the Grayton Beach Unit FL-95P, located in Walton County, Florida. FL-95P was designated as an OPA by the CBIA in 1990 and includes portions of Grayton Beach State Park and a privately owned inholding known as Old Miller Place. H.R. 479 is intended to replace the existing FL-95P map with a revised map that removes the six-acre Old Miller Place subdivision from FL-95P. In 1994, Congress enacted P.L. 103-461 to revise the western boundary of FL-95P to exclude from the OPA certain private land adjacent to Grayton Beach State Park. This land was not an inholding of the State Park.

In 1998, Congressman Joe Scarborough and Senators Connie Mack and Bob Graham contacted the Service on behalf of their constituents who asserted that Old Miller Place had been erroneously included in FL-95P. The Service then reviewed the history of the establishment of FL-95P, including whether it was an undeveloped coastal barrier at the time it was designated an OPA. The Service also reviewed the delineation of the boundaries of FL-95P in relation to the boundaries of the Grayton Beach State Park.

In 1990, when FL-95P was established, Old Miller Place contained 10 lots, four of which contained structures. FL-95P consists of two segments, and the densities of the discrete segments were calculated separately. The density of development within each segment of FL-95P was below the density threshold of one structure per five acres of developable land used to qualify coastal barriers as undeveloped, as defined by law at the time FL-95P was designated.

In addition to density of development, the Service examined infrastructure present in FL-95P, specifically at Old Miller Place. The Service's review indicates that Old Miller Place did not have a full complement of infrastructure available to each lot or building site, as the subdivision did not have roads with reinforced road beds.

The Service considers Old Miller Place an inholding of Grayton Beach State Park, and does not recommend that it be excluded from FL-95P, and therefore we oppose HR 479. In general, the Service considers an "inholding" to be developed or undeveloped private tracts of land which are not held for conservation or recreation purposes by their owners, and are contained within the exterior boundaries of the areas held primarily for wildlife refuge, sanctuary, recreation, or natural resource conservation purposes.

H.R. 4165, FL-64P, Clam Pass

H.R. 4165 addresses the Clam Pass Unit FL-64P, located in Collier County, Florida, near Naples. FL-64P was designated as an OPA by the CBIA in 1990. This OPA includes the County-protected Clam Bay Conservation Area and approximately 48 acres of private land and wetland/open water that are adjacent to the conservation area and that are not inholdings. Several structures exist on the private land, including large condominium buildings that were constructed prior to 1990. H.R. 4165 would replace the existing FL-64P map with a revised map that excludes privately owned land that is not held for conservation purposes and that is not an inholding of any protected area from the OPA, and would include additional conservation land within the OPA.

The Service was first contacted about this situation by the Baypointe at Naples Cay Condominium Association in 2003. The Baypointe at Naples Cay condominium building is ineligible for Federal flood insurance because it is within the OPA and was constructed following the FL-64P designation in 1990. Based on a comprehensive review of the history of the establishment of FL-64P as an OPA, and the history of development of the private land in question, the Service recommends adoption of a revised map that appropriately delineates the boundaries of the Clam Bay Conservation Area and excludes the private land that is not an inholding.

The Department's 1988 report to Congress delineated the Clam Bay Conservation Area as "otherwise protected;" however, this delineation did not include the private land in question. OPAs were intended to follow the boundaries of conservation and recreational areas. It is unclear why the map enacted by Congress in 1990 included the private land south of the Clam Bay Conservation Area that is not an inholding of the Clam Bay Conservation Area and has never been held for conservation or recreation. There is no information in the FL-64P legislative

history explaining why this private land was included in the OPA. At the time of the 1988 Report, several of the large structures already existed on the ground. However, the U.S. Geological Survey base map used in the 1988 report to delineate the OPA was outdated and depicted the area south of the Clam Bay Conservation Area as undeveloped wetland. It is possible that the private land was mistakenly believed to be undeveloped wetland and part of the conservation area.

The draft digital map dated July 21, 2005, appropriately follows the boundaries of the Clam Bay Pass Conservation Area. Collier County has concurred that the boundaries on the draft revised map correctly depict the conservation area. The draft map excludes approximately 48 acres of private land that are outside the conservation area boundaries and are not inholdings. The draft map also adds approximately 65 acres of conservation land to the OPA. The Service supports H.R. 4165.

Mr. Chairman, the next two bills on the agenda would modify the boundaries and affect the prohibitions on Federal spending for System units. With some exceptions, System units are composed of private lands. Most federal expenditures that support new development are prohibited within System units.

H.R. 1656, T10, North Padre Island

H.R. 1656 addresses the North Padre Island Unit T10, located in Kleberg County, Texas. T10 was designated as a System unit by CBRA in 1982. H.R. 1656 is intended to replace the existing T10 map with a revised map that excludes approximately 1,260 acres of developable land from Unit T10.

Unlike the preceding bills discussed in this testimony, this land would be removed from a System unit, as opposed to an OPA. System units carry prohibitions on Federal expenditures in addition to those on Federal flood insurance, including prohibitions against funds for road construction, dredging, beach stabilization, and other infrastructure projects. System units were intended to include lands that were relatively undeveloped at the time of their inclusion, and were privately owned or open to development. These areas can still be developed by their owners using private, State, or local funding, but Federal support for development is restricted.

Unit T10 is located on the northern end of Padre Island, contiguous with the Padre Island National Seashore. The 1,260 acre property in question is the northernmost portion of the unit. The property, owned by the Jones family, was undeveloped when it was designated as part of the CBRS in 1982 and it remains largely undeveloped today. The property was annexed by the City of Corpus Christi in 2002 and interested parties are currently working with the City of Corpus Christi to develop the area.

The Department was contacted about this situation by a firm representing the Jones family in 2003. The parties interested in revising the map of T10 asserted to the Service that the 1260 acres in question should not have been included in the CBRS. They based this assertion on the legislative history of the 1962 Padre Island National Seashore Act, which created the Padre Island National Seashore south of the area in question. Interested parties claimed that the

legislative history of the 1962 Act reflects Congressional intent to support and encourage development of private land outside the national seashore boundaries, including the property in question.

The Service has reviewed the history of the establishment of Unit T10, including whether it was an undeveloped coastal barrier at the time it was designated as part of the CBRS. The Service, in consultation with the Department's Office of the Solicitor, has reviewed the administrative record of this area and researched the claims of the Jones family and found no was unable to find any evidence that the area was inappropriately included in the CBRS in 1982. T10 qualified as an undeveloped coastal barrier, as defined by CBRA, at the time it was included in the CBRS in 1982. The legislative history of the Padre Island National Seashore Act of 1962 does not supersede CBRA, which was enacted 20 years later. In addition, the Department's 1988 Report to Congress included public comments from various entities recommending that the area in question should be removed from T10 for similar reasons. The Department reviewed these comments and recommended no changes to T10. Consistent with this recommendation, Congress made no changes to Unit T10 when it enacted the CBIA. For these reasons, the Service opposes removing the 1,260 acres from Unit T10, and therefore opposes H.R. 1656. We also note that CBRA does not prohibit development in this area; rather, it restricts Federal spending that encourages development.

H.R. 3280, P30 (Cape San Blas) and FL-92 (Indian Peninsula)

H.R. 3280 addresses Cape San Blas Unit P30, and Indian Peninsula Unit FL-92, located in Gulf County, Florida. P30 was designated as a System unit by CBRA in 1982, and was expanded in 1990 to include open water and a few islands in the sound. FL-92 was designated as a System unit by the CBIA in 1990. Much of P30 and FL-92 have developed despite CBRA's restrictions on Federal spending. H.R. 3280 would exempt the areas currently within P30 and FL-92 from the limitations on Federal expenditures and financial assistance under CBRA and limitations on Federal flood insurance coverage under the National Flood Insurance Act. The Service believes this bill differs from the typical "technical correction" type of CBRA legislation enacted in the past and would be precedent-setting. Unlike other technical correction bills, it does not adopt a revised map; rather it removes CBRA's prohibitions from entire CBRA units.

In November 2002, the Federal Emergency Management Agency (FEMA) designated parts of Gulf County as a higher risk flood zone. Mortgage lenders generally require homeowners in these zones to obtain flood insurance as a safeguard for their investments. Because of CBRA's prohibition on Federal flood insurance, these homeowners purchased insurance through private sector insurers at far higher costs. In 2002, private sector insurers stopped offering flood policies in Gulf County because of the increased risk in the flood zone as determined by FEMA. As a result, many residents in these two areas cannot obtain flood insurance of any kind.

Gulf County commissioned a report in 2002 and provided it to the Service. The report asserts that the Service misapplied the mapping criteria defining an "undeveloped coastal barrier." The Service reviewed the legislative history of these areas and the County's report and found no evidence suggesting P30 and FL-92 were incorrectly mapped or inappropriately designated as part of the CBRS by Congress. To help clarify the issue, the Service sent the County a response

in 2002, explaining the history of the units, the criteria used to delineate undeveloped coastal barriers, and the Service's role in modifying boundaries.

The Service's review indicates that units P30 and FL-92 were undeveloped coastal barriers, as defined by law, at the time they were included within the CBRS. Therefore, these areas were appropriately designated as System units. For these reasons, the Service opposes H.R. 3280.

Conclusion

Mr. Chairman, in November, 2005, the Service testified in support of modernizing the maps of the CBRS. In our testimony, we provided an in-depth justification for map modernization. One reason map modernization is important is that it will proactively address technical corrections that the Department of the Interior and Congress determine are legitimate and appropriate.

The existing suite of CBRS maps were created more than 15 years ago with rudimentary technology, are outdated, imprecise, and often inaccurate. The Service receives numerous requests from Congressional members and their constituents who seek to remove private land from the CBRS. When the Service receives such requests, we apply consistent and objective review criteria, researching the administrative records and information submitted by interested parties. Because of the antiquated maps that currently represent the CBRS, this case-by-case technical correction review process is lengthy, resource intensive, and reactive. The Service will continue to receive requests that result in legislation such as H.R. 138, H.R. 479, H.R. 4165, H.R. 1656, S. 903, and H.R.3280 as long as the maps used to administer CBRA are inadequate to the needs of the public.

Congress recognized this need for improved technology when it enacted the Coastal Barrier Resources Reauthorization Act of 2000, which directed the Service to complete a Digital Mapping Pilot Project that includes digitally produced draft maps for between 50 and 75 CBRS areas and a report to Congress that describes the feasibility and costs for completing digital maps for all CBRS areas. The Service is happy to work with Congress to reauthorize and amend CBRA to provide the authority to finalize the pilot project maps and begin modernizing the rest of the CBRS.

Modernizing the entire suite of CBRS maps will give landowners, insurance providers, Federal agencies, and state and local planners a more precise and accessible tool for determining boundary locations, making investment decisions, issuing flood insurance policies, and managing coastal areas. Digital maps can help avoid future problems with private landowners and Congress, improve government efficiency, and conserve natural resources.

Mr. Chairman, thank you again for your support of CBRA. This concludes my testimony, and I am happy to respond to any questions.