

APPENDIX E: Responses to Unit-Specific Public Comments

Section 3(b) of the 2006 Coastal Barrier Resources Reauthorization Act (CBRA) requires that the Secretary of the Interior (Secretary) prepare this final report regarding the Digital Mapping Pilot Project (pilot project) after providing an opportunity for the submission and consideration of public comments. On April 7, 2009, the U.S. Fish and Wildlife Service (Service) released to the public its *Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project* (including draft digital maps dated June 12, 2006, that proposed modifications to 70 Coastal Barrier Resources System (CBRS) units) and announced the start of a 90-day public comment period, which was later extended to 120 days. Section 3(c)(3) of the 2006 CBRA requires that this final report contain a summary of the comments received

from Governors, other government officials, and the public regarding the digital maps.

The Service received 159 written comments during the 120-day public comment period (April 7 through August 5, 2009). Unit-specific comments were received for 26 of the 70 units in the 2008 pilot project report, though three of the units that received comments are no longer included in the pilot project.¹ The majority of the comments received related to the Florida and North Carolina pilot project units. Seventeen of the comments received related to CBRS units that are not within the scope of the pilot project.

The comments received for each unit during the public comment period and the Service’s responses to these comments are summarized

in this appendix. It is also indicated, where appropriate, if the final recommended maps (dated November 20, 2013, or March 18, 2016) were modified as a result of the comments. Comments concerning labeling and typographical errors are not addressed in this appendix; however, such comments were reviewed and corrections were made as appropriate. Comments related to units that are not currently within the pilot project are not addressed in this appendix. Significant issues raised during the public comment period that are relevant to more than one CBRS unit are addressed with a Service response in Chapter 4 of this final report (see Table 7 below). Copies of the comments received during the public review period have not been reproduced in this report, but will be made available by the Service’s Headquarters Office upon request.

Table 7 . Summary of Substantive Overarching Comments and Responses Addressed in Chapter 4

<i>Number</i>	<i>Issue</i>	<i>Page Number</i>
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Appendix E: Responses to Unit-Specific Public Comments

Table 8 provides the page number for the comments specific to individual units addressed in this Appendix.

Table 8. Summary of Unit-Specific Comments

<i>Unit</i>	<i>County/Parish</i>	<i>Page Number</i>
Delaware		
DE-07*	Sussex	E-3
DE-07P	Sussex	E-3
H01	Sussex	E-4
North Carolina		
NC-05P	Carteret	E-5
NC-06*	Onslow	E-5
NC-06P	Carteret, Onslow	E-5
L06	Onslow	E-8
South Carolina		
M02	Georgetown	E-9
M03	Georgetown	E-10
Florida		
P04A	St. Johns	E-10
P05	St. Johns	E-11
P05P	St. Johns	E-12
P08	Volusia	E-12
FL-13P	Brevard	E-13
P09AP*	Brevard	E-14
P10A	Indian River, St. Lucie	E-14
FL-14P	St. Lucie	E-14
P11	St. Lucie	E-15
FL-39	Monroe	E-17
FL-45	Monroe	E-17
P17A	Lee	E-17
FL-67	Lee	E-18
FL-67P	Lee	E-18
P21	Charlotte	E-22

* Recommended new or reclassified Unit.

DELAWARE

Unit DE-07, Delaware Seashore

Comment 1: A homeowners association commented that their community, The Chancellery, was incorrectly placed within an Otherwise Protected Area (OPA) as a result of a mapping discrepancy.

Service Response to Comment 1: The area in question has not been recommended for removal from the CBRS; rather, on both the proposed map and the final recommended map, the area is reclassified from OPA Unit DE-07P to System Unit DE-07. The CBRS contains two types of units, System Units and OPAs. System Units are generally comprised of privately held areas. OPAs are generally comprised of areas held for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. In carrying out the pilot project, the Service noted cases where areas held for conservation and/or recreation are located within System Units, as well as cases where privately held areas (that are not inholdings) are located within OPAs.

When the Service comprehensively remapped the CBRS units in the pilot project, the conservation and/or recreation areas within the units were identified and the history of those areas was evaluated to determine whether they were appropriately classified as System Unit or OPA. The Service’s remapping protocol at the time of the pilot project generally recommended reclassification from System Unit to an OPA, or vice versa, depending on when the particular area was included within the CBRS and whether the area was held for conservation and/or recreation at the time it was included.² If the Service found no evidence that an area within an existing OPA was held for conservation and/or recreation at the time it was originally included within the CBRS, then the area in question was generally recommended for reclassification from OPA to System Unit as long as it met the Coastal Barrier Resources Act (CBRA) criteria for an undeveloped coastal barrier at the time it was included within the CBRS.

The area to the north of the Delaware Seashore State Park where The Chancellery subdivision is located is one such area. No structures were on-the-ground in this subdivision when the area was included within the CBRS in 1990. Because the Service’s assessment found that the area met the CBRA criteria for an undeveloped coastal barrier at the time of inclusion within the CBRS, it is not recommended for removal from the CBRS, but rather is recommended for reclassification from OPA to System Unit. There are no changes between the proposed and final recommended maps for Unit DE-07 as a result of this comment.

Lessons learned through the course of the pilot project and other comprehensive remapping projects resulted in a revision to the Service’s protocol regarding System Unit versus OPA classification for future mapping projects. See Issue 11 in Chapter 4 for more information about reclassifications within the CBRS and Chapter 6 for additional information concerning the Service’s guiding principles and criteria for modifications to the CBRS.

Unit DE-07P, Delaware Seashore

Comment 2: State officials commented that their records indicate Breakwater Beach subdivision was undeveloped private land in 1982 when the CBRA was established, and they believe that it meets the criteria for a System Unit.

Service Response to Comment 2: Although Breakwater Beach subdivision was undeveloped when CBRA was first established in 1982, approximately 15 residential structures were already on-the-ground within this subdivision when the area was added to the CBRS in November of 1990. The Service’s assessment indicates these private properties were inappropriately included within the CBRS and are appropriate for removal from this unit. There are no changes between the proposed and final recommended maps for Unit DE-07P as a result of this comment.

Comment 3: During the comment period, the Service was asked

whether we had considered the infrastructure information for the South Shores Community and Marina submitted by the homeowners association in January 2005 in support of a request to remove the area from the CBRS.

Service Response to Comment 3: The Service reviewed the information submitted by the homeowners association and our historical background records for Unit DE-07P. In addition, we worked closely with the president of the homeowners association to obtain additional information that was needed for a complete assessment. Our review found that in 1990, the subject area consisted of approximately 90 mobile homes in the South Inlet Trailer Park, a marina, and an additional trailer park south of the marina that contained approximately 25 mobile homes and one modular home. However, the area did not have a paved road (which is a necessary component of a full complement of infrastructure according to the CBRA infrastructure criteria).³

The CBRA contains the following definition of the term “structure”:

A walled and roofed building, other than a gas or liquid storage tank, that—

- (A) is principally above ground and affixed to a permanent site, including a manufactured home on a permanent foundation; and*
- (B) covers an area of at least 200 square feet.⁴*

Although not all of the mobile homes met this definition, there were at least ten of them affixed to a permanent foundation. Additionally, there were three buildings on the South Shore Marina site and one modular home in the trailer park south of the marina. Though much of this area has been redeveloped, the Service’s assessment found that the development on-the-ground in 1990 constituted a cluster of structures large enough to be excluded from the CBRS (see Chapter 6 for additional information concerning the Service’s criteria for modifications to the CBRS). Because the subject area did not meet the CBRA criteria for

an undeveloped coastal barrier at the time of inclusion, it is recommended for removal from the CBRS on the final recommended map. There are changes between the proposed and final recommended maps for Unit DE-07P as a result of this comment.

Unit H01, North Bethany Beach

Comment 4: State officials support the Service's proposed removal of the Bayberry Dunes subdivision from the CBRS. Their records show the permit for the first house in Bayberry Dunes was issued in December 1981.

Service Response to Comment 4:

When determining whether the removal of an area from the CBRS is warranted, the Service assesses the level of development on-the-ground at the time the area was (or is) included within the CBRS⁵ and does not consider permits, approved development plans, or other legal indicators of intent to develop. The subject area is recommended for removal from the CBRS because the Service's assessment found that the infrastructure for the Bayberry Dunes subdivision was on-the-ground by March 15, 1982, which was the cutoff date for the Department of the Interior's (Department) analysis of coastal barrier ground conditions in the case of areas that were included by the CBRA of 1982. Additionally, the Service's background record for Unit H01 indicates that the southern boundary was intended to be located to the north of Bayberry Dunes subdivision. The Service did not consider the date when the homes were permitted in its assessment. See Chapter 6 for additional information concerning the Service's criteria for modifications to the CBRS.

NORTH CAROLINA

Comments affecting all pilot project CBRS Units in North Carolina

Comment 5: State and local officials are concerned that the Service may have overlooked current major infrastructure projects and potential future improvements and never assessed the impact of placing the project areas within a System Unit of the CBRS. In

particular, the officials are concerned about infrastructure that may be damaged or destroyed by a storm event. These officials want to know if the new restrictions will eliminate Federal funding for:

- repair and reconstruction of roads and bridges outside the original footprint,
- installation of sandbags along ocean-front roadways after storms,
- construction and maintenance of stormwater treatment facilities and outfalls,
- dredging and disposal projects, and
- beach nourishment.

Service Response to Comment 5:

When remapping a particular area, the Service considers projects to the extent that they impact the current development status of a coastal barrier in accordance with the Service's criteria for modifications to the CBRS described in Chapter 6. Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis following consultation between the funding agency and the Service. There are many different exceptions that may be applicable and they are each dependent upon a number of factors. Examples of the specifics considered for such consultations may include (depending on the type of project) but are not limited to: the date that the infrastructure that is to be repaired was first constructed, whether there is a proposed expansion in service volume and/or area of the infrastructure, the specific details regarding where sand is proposed to be moved to and from, the anticipated effects of the particular project on fish and wildlife, and/or whether the project is to be conducted pursuant to certain sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Due to the case by case nature of consultations, the Service cannot provide generalized responses to whether such projects would be allowable under the CBRA. The Federal funding agency must consult with the Service's local Ecological

Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Comment 6: State officials commented that the Service is required to determine both benefits and problems associated with the approval of the CBRS units, and they were unable to find this analysis.

Service Response to Comment 6: Section 6(d) of the 2000 CBRRA required that the initial pilot project report to Congress describe the results of the pilot project and the feasibility, data needs, and costs of completing digital maps for the entire CBRS. Specifically, that report was to include:

- a description of the cooperative agreements that would be necessary to complete digital mapping of the entire CBRS;
- the extent to which the data necessary to complete digital mapping of the entire CBRS are available;
- the need for additional data to complete digital mapping of the entire CBRS;
- the extent to which the boundary lines on the digital maps differ from the boundary lines on the original maps; and
- the amount of funding necessary to complete digital mapping of the entire CBRS.

The Service addressed all of the above requirements with the initial 2008 pilot project report. Section 3(c) of the 2006 CBRRA requires that this final pilot project report include:

- the final recommended digital maps created under the pilot project;
- recommendations for the adoption of the digital maps by Congress;

- a summary of the comments received from the Governors of the States, other government officials, and the public regarding the digital maps;
- a summary and update of the protocols and findings of the initial pilot project report required under Section 6(d) of the 2000 CBRRA; and
- an analysis of any benefits that the public would receive by using digital mapping technology for all CBRS units.

The Service addressed all of these requirements with this final pilot project report. There is no statutory requirement that the Service assess any benefits and problems with the approval of the CBRS units as stated by the commenters.

Comment 7: State officials are concerned that areas within existing units and the proposed new additions are not owned by the State or Federal Government and request that the ownership of all areas within the CBRS units be determined.

Service Response to Comment 7: The CBRS includes areas that are owned by a variety of private, Federal, State, and local entities. It is not a requirement that any areas within the CBRS be owned by the State or Federal Government. For information on how the Service determines whether to classify an area as System Unit or OPA, see Issue 11 in Chapter 4 and the “Overview of Protocol for CBRS Unit Classification” section in Chapter 6.

**Unit NC-05P,
Roosevelt Natural Area**

Comment 8: Local officials commented that they are supportive of the Service’s efforts to update the CBRS maps using the latest mapping technology, but are opposed to the expansion and creation of new CBRS units in the pilot project. However, the commenters request that if Unit NC-05P is expanded as proposed, the northern boundary of the unit be moved northward to follow the center of the Atlantic Intracoastal Waterway instead of the centerline of a channel in Bogue Sound.

Service Response to Comment 8: In 1982 and 1988 the Department published guidance for delineating CBRS boundaries through the aquatic habitat landward of coastal barriers.⁶ In carrying out the pilot project, the Service noted that the Department’s guidance for delineating these landward boundaries has not been consistently applied to the CBRS maps created in the past, including the map for Unit NC-05P. The 1988 published guidance states that if there is an open water body greater than one mile wide landward of the coastal barrier, then the boundary is generally placed in the open water approximately one mile landward of the farthest landward extent of wetlands on the protected side of the coastal barrier. If a discernible natural channel, artificial channel, or political boundary exists in the open water approximately one mile landward of the coastal barrier, the channel or political boundary is used as the landward boundary. The northern boundary of Unit NC-05P is mapped according to this protocol, and not placed in the center of the Atlantic Intracoastal Waterway because it is greater than one mile landward of the coastal barrier. There are no changes between the proposed and final recommended maps for Unit NC-05P as a result of this comment.

**Units NC-06 and NC-06P,
Hammocks Beach**

Comment 9: Local officials expressed concern over the inclusion within proposed new Unit NC-06 of a large area of aquatic and marsh habitat behind a barrier island (Emerald Isle) that is already fully developed, and with the alignment of the proposed boundary of the unit against the western side of the North Carolina Highway 58 bridge. Commenters stated that this bridge is one of the main access points onto the barrier island from the mainland, and any future bridge project is likely to depend on Federal funds.

Service Response to Comment 9: In carrying out the pilot project, the Service noted that there are inconsistencies in how the associated aquatic habitat situated behind

development was mapped in 1982, 1990, and when areas were added to the CBRS through subsequent legislative amendments. In the 2008 pilot project report, the Service established a consistent protocol for adding associated aquatic habitat behind a developed coastal barrier to the CBRS. The associated aquatic habitat of Bogue Sound between the channel that empties into the Atlantic Ocean at Bogue Inlet and the Highway 58 bridge is an area that was added behind a developed barrier in accordance with this protocol. However, in addressing the comments received during the public comment period opposing such additions, the Service agrees that there should be a limit as to how far additions of associated aquatic habitat may extend behind a developed barrier. The Service’s updated protocol establishes a limit with the boundary generally drawn along the outside edge of a channel that exists in the associated aquatic habitat within one mile of the undeveloped portion of the coastal barrier. For more information on this updated protocol for the addition of associated aquatic habitat behind a developed barrier, see Issue 14 in Chapter 4. There are changes between the proposed and final recommended maps for Unit NC-06 as a result of this comment. The boundary of Unit NC-06 on the final recommended map is modified to be at the eastern edge of the channel emptying into the Atlantic Ocean at Bogue Inlet and is now almost two miles west of the Highway 58 bridge.

Comment 10: Local officials requested that the geographic area of the existing OPA Unit NC-06P be reduced to reflect the holdings of the State only, and that the proposed new System Unit NC-06 be removed entirely from the final pilot project report.

Service Response to Comment 10: The CBRS contains two types of units, System Units and OPAs. System Units are generally comprised of privately held areas. OPAs are generally comprised of areas held for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. In carrying out the pilot project, the Service noted cases where

areas held for conservation and/or recreation are located within System Units, as well as cases where privately held areas (that are not inholdings) are located within OPAs.

When the Service comprehensively remapped the CBRS units in the pilot project, the conservation and/or recreation areas within the units were identified and the history of those areas was evaluated to determine whether they were appropriately classified as System Unit or OPA. The Service's remapping protocol at the time of the pilot project generally recommended reclassification from System Unit to OPA, or vice versa, depending on when the particular area was included within the CBRS and whether the area was held for conservation and/or recreation at the time it was included.⁷ If the Service found no evidence that an area within an existing OPA was held for conservation and/or recreation at the time it was originally included within the CBRS, then the area in question was generally recommended for reclassification from OPA to System Unit as long as it met the CBRA criteria for an undeveloped coastal barrier at the time it was included within the CBRS.

The associated aquatic habitat between Bear Island and the mainland is one such area. The Service's review found no documentation indicating that this area is held for conservation and/or recreation (in accordance with the CBRA definition of an OPA); however, it qualified for inclusion within a System Unit at the time it was included within the CBRS. There are no changes between the proposed and final recommended maps for Units NC-06 and NC-06P as a result of this comment.

Lessons learned through the course of the pilot project and other comprehensive remapping projects resulted in a revision to the Service's protocol regarding System Unit versus OPA classification for future mapping projects. See Issue 11 in Chapter 4 for more information about reclassifications within the CBRS and changes to the Service's OPA mapping protocol and Chapter 6 for additional

information concerning the Service's guiding principles and criteria for modifications to the CBRS.

Comment 11: State and local officials are concerned that Federal funding prohibitions on areas within new System Unit NC-06 will have an impact on dredging and beach nourishment projects. State officials commented specifically that Cow Creek Channel, which is located behind Bear Island and is proposed for reclassification from OPA Unit NC-06P to System Unit NC-06, is dredged periodically to provide public ferry service between the mainland and Hammocks Beach State Park on Bear Island. Although State officials have not yet used Federal funds to maintain this channel, they would like to maintain that option for the future. The commenters are concerned that reclassification of the associated aquatic habitat from Unit NC-06P to Unit NC-06 will make consistency consultations a requirement for such projects, which will add uncertainty, increase the time in implementing a project, and create controversy.

Service Response to Comment 11: The Service's review found no documentation indicating that Cow Creek Channel and the marsh between Bear Island and the mainland are held for conservation and/or recreation (in accordance with the CBRA definition of an OPA); however, they qualified for inclusion within a System Unit at the time they were included within the CBRS. See Issue 11 in Chapter 4 for more information about reclassifications within the CBRS. There are no changes between the proposed and final recommended maps for Unit NC-06 as a result of this comment.

There is an exception in the CBRA for the maintenance of existing Federal navigation channels.⁸ Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information

concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Comment 12: Local officials are concerned that the proposed creation of System Unit NC-06 ignores the intention of Congress because associated aquatic habitats should only be included within the CBRS if these areas include few manmade structures and take into account the existence of manmade features and human activities that impede the natural processes. These officials identify the following evidence of human activities: structures within Hammocks Beach State Park, the periodic dredging of channels providing access to Bear Island, the inclusion of waterfront structures along the Swansboro and Cedar Point shorelines, and the dredging and disposal project activities in the Bogue Inlet area.

Service Response to Comment 12: The consideration of human activities is a part of the CBRA definition of an undeveloped coastal barrier:

- (1) *The term "undeveloped coastal barrier" means—*
 - (A) *a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—*
 - (i) *is subject to wave, tidal, and wind energies, and*
 - (ii) *protects landward aquatic habitats from direct wave attack; and*
 - (B) *all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters; but only if such feature and associated habitats contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes.*⁹

However, the significance that human activities have in considering whether an area is undeveloped under the CBRA is limited. The Department's May 1983 Final Environmental Statement Undeveloped Coastal Barriers report contains an explanation of how this is applied:

*All coastal barriers are affected to some degree by human activities. Even completely undeveloped coastal barriers often have a considerable history of human use and occupancy, which have from time to time affected environmental quality, vegetation, wildlife, and other factors. For the most part, these impacts have been minor and well within the capability of the coastal barrier ecosystem to mitigate or repair in a short period of time. Significant impacts--that is, those which interfere with the geological and ecological processes responsible for maintaining coastal barrier ecosystems--are nearly always associated, either directly or indirectly, with intensive development involving large capital investments on the site.*¹⁰

If a coastal barrier contains few man-made structures but is subject to significant levels of human activity such as the intensive development associated with a large condominium development, it is considered developed. The 1983 report also states:

The wording of this section requires evaluation of human impacts only in cases where structures are present; completely undeveloped coastal barriers are not evaluated (presumably on the assumption that, without any structures, the probability of significant human impacts on geological and ecological processes is extremely low). Although human activities (such as the destruction of dunes) which significantly

*affect geological processes almost always have significant impacts on ecological processes as well, the converse is less often true. Thus, ditching of tidal marshes, which can have significant ecological impacts by damaging or destroying habitat for numerous fish and wildlife species, may have only minor impacts on geologic processes. The existence of ecologically adverse activities alone would not cause a coastal barrier to be excluded for purposes of denying flood insurance coverage.*¹¹

This 1983 report goes on to say that the impacts of human activities are considered in cases where the development density is less than the threshold for identifying an undeveloped coastal barrier, but not in cases where the coastal barrier is completely undeveloped. Significant impacts on both geological and ecological processes must be present, and the area must contain some development in order for it to be a factor.

Our review found that the area within new System Unit NC-06 (which includes a large area of associated aquatic habitat that is recommended for reclassification from OPA Unit NC-06P and new additions on the north and east) met (or meets, for new additions) the CBRA criteria for an undeveloped coastal barrier at the time it was included within the CBRS and is well below the density threshold of one structure per five acres of fastland. There were a few scattered structures when the area was first included within OPA Unit NC-06P, and the Service found no significant impacts on geological and ecological processes related to these structures. There are no changes between the proposed and final recommended maps for Units NC-06 and NC-06P as a result of this comment.

Comment 13: Local officials are concerned that the proposed expansion of the CBRS to include the marsh along the shorelines of the Towns of Swansboro and

Cedar Point will have negative consequences for the waterfront structures. The commenters indicated that the Swansboro downtown district is a designated urban waterfront area and is on the National Register of Historic Places due to its long history of use as a working waterfront area.

Service Response to Comment 13:

The CBRA definition of a coastal barrier includes all associated aquatic habitats, encompassing the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.¹² The statutory definition is consistent with the fact that the upland component and the associated aquatic habitat are inseparable parts of a single coastal barrier ecosystem. The CBRS currently includes approximately 2.9 million acres of associated aquatic habitat, some of which is located close to development. The subject area that is added to Unit NC-06 is consistent with the CBRA definition of associated aquatic habitat. Unit NC-06 is modified where appropriate to include the entire width of the Intracoastal Waterway within the unit in accordance with the Service's channel mapping protocol. As a result of this protocol, additional docks, piers, marinas, and other shoreline structures are included within the CBRS. However, such structures are already prevalent within the CBRS.

When comprehensively remapping CBRS units, the Service generally applies a 20 foot buffer (i.e., leaving space between the boundary and the feature it is intended to follow) along developed shorelines to ensure that structures and/or infrastructure (e.g., walled and roofed structures, roads, and bulkheads) located along the shoreline are not inadvertently included within the CBRS. Large marinas that existed when the area was originally included within the CBRS are generally excluded from the CBRS. However, because docks, piers, and other similar structures are located throughout the waterways that are part of the associated aquatic habitat of the CBRS, and these structures frequently change in size and shape

over time, it would be impractical to map CBRS units to exclude them. See Issue 16 in Chapter 4 for more information about the Service’s mapping protocol for shoreline and development feature buffering and Issues 12 and 15 for more information about the mapping protocols for channels, docks, piers, and marinas.

Unit L06, Topsail

Comment 14: State officials commented that they are extremely concerned by the mapping of Unit L06 because there are approximately 12 bridges and 7.5 miles of roads that the State maintains in this unit. The State may need to increase the footprint, replace, and/or relocate the existing roadways and bridges as maintenance and traffic conditions change. There is also the potential that new roadways or bridges will be required to serve the growing population in this area.

Service Response to Comment 14: There is an exception in the CBRA for the maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.¹³ There is also an exception in the CBRA for roads that are not essential links in a larger network or system, but projects that fall under that exception must meet additional requirements.¹⁴ Determinations regarding whether specific projects or actions meet an exception to the CBRA’s limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service’s local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA’s limitations on Federal expenditures, and exceptions to those limitations, is available on the Service’s website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Most of the area within Unit L06 has been in the CBRS since 1982.

Road projects within the unit that do not meet an exception under the CBRA have been prohibited from receiving Federal funds for over 30 years and will continue to be prohibited from receiving Federal funds even if no additions are made to the existing unit. Of the 169 total acres recommended for addition to Unit L06, only four acres are fastland. The Service generally does not consider future development or infrastructure projects when assessing areas for addition to the CBRS (see Chapter 6 for additional information concerning the Service’s criteria for modifications to the CBRS). There are no changes between the proposed and final recommended maps for Unit L06 as a result of this comment.

Comment 15: Local officials, individuals, and homeowners associations commented that Unit L06 should be removed in its entirety from the CBRS based on a claim that there was a full complement of existing infrastructure (i.e., roads, wastewater disposal system, electric service, and fresh water supply) to each lot or building site in the area when it was included in 1982 within the CBRS. Local officials submitted documentation concerning the level of infrastructure that was on-the-ground at the time Unit L06 was designated in 1982.

Service Response to Comment 15: The Service assessed the information submitted by the commenters and other interested parties, Onslow County property parcel data, and historical imagery and background records for Unit L06. Our review found that though there were some structures on-the-ground and a main trunk line of infrastructure that ran along the length of the unit in 1982, the area still met the CBRA criteria for an undeveloped coastal barrier when it was included within the CBRS in 1982. Therefore, the Service does not recommend removing Unit L06 from the CBRS or remapping the unit to remove the majority of the land currently in the unit from the CBRS. A summary of the Service’s findings related to Unit L06 are below. There are no changes between the proposed and final

recommended maps for Unit L06 as a result of this comment.

The Service’s historical background record on Unit L06 contains information about the existence of a main road through North Topsail Beach and the basic availability of utilities along that road prior to the inclusion of the area within the CBRS. A July 1982 memo of the Department’s Coastal Barriers Task Force states that structures were scattered over the unit in very low densities, primarily along Highway 210, with the overall density very much below the threshold of one structure per five acres of fastland. In addition, the memo stated that no evidence was found that a full complement of infrastructure exists at each lot or building site within Unit L06.

The 1982 CBRS definition and delineation criteria state that:

*The presence on a coastal barrier of a single road, or even through highway, plus associated electric transmission and water and sewer lines in this highway corridor does not constitute the necessary full complement of infrastructure necessary to support development.*¹⁵

This is essentially the level of infrastructure that existed in North Topsail Beach at the time of the initial CBRS designation, with the exception of a couple of areas that had more extensive infrastructure and structures on-the-ground, which are either currently excluded from the unit or recommended for removal on the final recommended maps.

Our review of Unit L06 also considered the density of development on-the-ground when the unit was designated in 1982. Unit L06 was comprised of approximately 797 acres of uplands and contained approximately 35 structures in April of 1982; therefore the density of development was about one structure per 23 acres of land above mean high tide, well below the density threshold (one structure per five acres of land above mean high tide) to be considered developed. The Service’s background record on Unit L06 indicates that in 1982, a

review of the aerial photography dated April 30, 1982, verified the existence of the components of a coastal barrier and confirmed the lack of sufficient structures and other facilities or visible impacts to consider the area developed as defined in the CBRA.

Comment 16: Local officials requested that those areas the Town of North Topsail Beach had zoned as Conservation District prior to their inclusion within the CBRS in 1982 be reclassified from System Unit to a new OPA. The commenters submitted excerpts from the Town's zoning ordinance. These excerpts state that the Conservation District is established to protect floodplain, coastal waters, and areas of environmental concern of the Coastal Area Management Act; within this zoning designation, only water-dependent uses are permitted and intensive use of the land is not permitted.

Service Response to Comment 16: 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, are typically included within OPAs of the CBRS.¹⁶ All other areas, including those subject to certain regulations and/or zoning designations (which may be subject to change), are typically included within System Units rather than OPAs. Therefore, the Service does not recommend reclassifying from System Unit to OPA the areas in the Town that are zoned as Conservation Districts. See Issue 6 in Chapter 4 for more information concerning this protocol related to zoning designations.

Comment 17: The Service received many comments on Unit L06 from individuals stating that CBRA has failed to discourage development in the Town of North Topsail Beach and the unit should therefore be removed from the CBRS or the law should be repealed.

Service Response to Comment 17: The Service does not recommend removing areas simply because they have developed after they were added to the CBRS, and would not support the repeal of the CBRA. See Issue 2 in Chapter 4 for more information.

Comment 18: Local officials requested that five parcels at the west end of Waterway Drive be removed from the CBRS because they believe these parcels meet the guidelines for existing infrastructure as indicated in Section 2 of the 2000 CBRA¹⁷ and are consistent with other properties along Waterway Drive that are proposed by the Service for removal from the CBRS.

Service Response to Comment 18: The Service does not recommend removing the five parcels at the west end of Waterway Drive from the CBRS. On the proposed map, the boundary of the unit was modified to be located at the 1990 break-in-development. The break-in-development is where development ended when the area was originally included within the CBRS (i.e., the area immediately adjacent to the last structure in a cluster or row of structures, or at the property parcel boundary of the last structure).¹⁸ The Service's assessment found that, at the time of inclusion within the CBRS, the five parcels were undeveloped and did not have a paved road (which is a necessary component of a full complement of infrastructure). See Chapter 6 for additional information concerning the Service's criteria for modifications to the CBRS. There are no changes between the proposed and final recommended maps for Unit L06 as a result of this comment.

SOUTH CAROLINA

Unit M02, Litchfield Beach

Comment 19: Local officials commented that two existing homes on Norris Drive are added to Unit M02 on the proposed map. The commenters requested confirmation that these two homes are intended to be included within the unit.

Service Response to Comment 19: The homes on Norris Drive were not visible on the 1999 base map imagery used for the proposed map. These two homes were already on-the-ground at the time the proposed maps were produced;

therefore, on the final recommended map, the northern boundary of Unit M02 is returned to its existing location. The two homes are not recommended for addition to the CBRS. There are changes between the proposed and final recommended maps for Unit M02 as a result of this comment.

Comment 20: Local officials commented that the creeks within and proposed for addition to Unit M02 are subject to periodic dredging and should be removed from the CBRS.

Service Response to Comment 20: Some portions of the creeks are within Unit M02 and some portions of the creeks are recommended for addition to the unit. Channels are part of the associated aquatic habitat of coastal barriers and have been included as such throughout the CBRS. In carrying out the pilot project, the Service noted that the Department's 1982 and 1988 published guidance¹⁹ have not been consistently applied to the CBRS maps, and we modified the boundaries on the proposed maps to include the entire width of the channel within the CBRS unit. See Issue 12 in Chapter 4 for more information about the Service's protocol for mapping of channels within the CBRS. There are no changes between the proposed and final recommended maps for Unit M02 as a result of this comment.

There is an exception in the CBRA for the maintenance of existing Federal navigation channels.²⁰ Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Comment 21: In accordance with the CBRA's requirement to update the CBRS maps at least once every five years to account for natural changes,²¹ the Service prepared draft revised maps dated November 30, 2012, for all CBRS units in South Carolina. The Service held a comment period on these draft maps in 2013 for Federal, State, and local stakeholders. During the comment period, we received a comment from the Town of Pawleys Island. However, the change requested by the Town of Pawleys Island was outside the scope of the Service's administrative authority under the CBRA in revising the CBRS boundaries to account for natural changes. Because the pilot project comprehensively revises Unit M02, the Service is addressing the Town's comment here. The Town of Pawleys Island requested that the CBRS boundary at the northern end of the town (which is the southern boundary of Unit M02) be moved northward of the jetty at the south side of Midway Inlet.

Service Response to Comment 21: The Service's historical background record indicates that in 1982, when Unit M02 was established, the Department was aware of the shoreline stabilizing structures (at that time, it was rock revetments and a small pile-driven groin) at the north end of Pawleys Island. The Department considered the presence of these structures and found no basis for excluding from the CBRS the property where the structures were located. The area around Midway Inlet is a dynamic area and has changed significantly since 1982. The Service recommends that the jetty remain within the CBRS. There are no changes between the proposed and final recommended maps for Unit M02 as a result of this comment.

There is an exception in the CBRA for the maintenance or improvements of existing Federal navigation channels and related structures, such as jetties.²² Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal

funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Unit M03, Pawleys Island

Comment 22: Local officials commented that it is difficult to determine whether the existing groin at the southern end of Springs Avenue is located within the CBRS because the groin is very close to the proposed boundary of Unit M03 on the proposed map. The local officials recommend that the groin not be located within the CBRS because of the protection the groin provides to the south end of Pawleys Island, and because they would like to have the option of seeking Federal funds to repair the groin if it is damaged.

Service Response to Comment 22: Through the course of preparing the final recommended maps, the Service determined that we had incorrectly depicted the existing northern lateral boundary of Unit M03 on the proposed map. The existing boundary is actually located approximately 20 feet further south than is shown on that map. Because the Service recommends no change to the boundary of Unit M03 in that location, the final recommended boundary has been adjusted by 20 feet south to the actual location of the existing boundary. The groin on the southern end of Springs Avenue is not currently within the CBRS and is not recommended for addition to the CBRS on the final recommended map. There are changes between the proposed and final recommended maps for Unit M03 as a result of this comment.

Comment 23: Local officials commented that the creeks within and proposed for addition to Unit M03 are subject to periodic dredging and should be removed from the CBRS.

Service Response to Comment 23: Some portions of the creeks are within Unit M03, and some portions of the creeks are recommended for addition to the unit. Channels are part of the associated aquatic habitat of coastal barriers and have been included as such throughout the CBRS. In carrying out the pilot project, the Service noted that the Department's 1982 and 1988 published guidance²³ have not been consistently applied to the CBRS maps, and we modified the boundaries on the proposed maps to include the entire width of the channel within the CBRS unit. See Issue 12 in Chapter 4 for more information about the Service's protocol for mapping of channels within the CBRS. There are no changes between the proposed and final recommended maps for Unit M03 as a result of this comment.

There is an exception in the CBRA for the maintenance of existing Federal navigation channels.²⁴ Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

FLORIDA

Unit P04A, Usina Beach

Comment 24: Local officials requested that the Service review several areas of concern where the proposed boundary of Unit P04A may need to be adjusted or buffered. The areas of concern are: (1) a private home on Seminole Drive that is very close to the CBRS boundary; (2) three buildings located on Bella Vista Boulevard in Las Palmas on

the Intracoastal Condominiums community that appear to be clipped by the CBRS boundary; (3) the Las Palmas on the Intracoastal Condominiums clubhouse that may have been inadvertently included within the CBRS; and (4) three areas of uplands (lots in the Fort Moosa Gardens subdivision, at the end of Maralinda Drive, and on the south side of Unit P04A along State Highway A1A) that appear to have been inadvertently added to the CBRS.

Service Response to Comment 24:

The Service has reviewed the areas of concern that were identified by local officials. The final recommended map modifies the boundary of Unit P04A to add an appropriate buffer (at least five feet) between the boundary and the structures in (1) and (2) above and to remove the uplands specified in (4) above. The boundary of Unit P04A in these particular areas is intended to follow the wetland/fastland interface.

The area where the Las Palmas on the Intracoastal Condominiums clubhouse is located has been within the CBRS since 1990. The Service's assessment found that this area was undeveloped when it was first included within the CBRS and the clubhouse was constructed about ten years after the area was added to Unit P04A. Also, the CBRS boundary lines on the maps follow the underlying features they were intended to follow on-the-ground. Therefore, the clubhouse remains within the CBRS on the final recommended map. See Chapter 6 for additional information concerning the Service's criteria for modifications to the CBRS.

There are changes between the proposed and final recommended maps for Unit P04A as a result of this comment.

Comment 25: An individual submitted comments and supporting information to request that the proposed southern boundary of Unit P04A be moved to the north so that it does not cut through the uplands located on the commenter's vacant property. In the submitted

materials, the commenter included documentation of a claim that there was a full complement of existing infrastructure (i.e., roads, wastewater disposal system, electric service, and fresh water supply) to the subject lot when it was included within the CBRS on the proposed map.

Service Response to Comment 25:

The proposed southern boundary of Unit P04A, where it bisects the commenter's property, is intended to follow a wetland/fastland interface and include additional wetlands within the unit. Updated imagery and information submitted by the commenter showed that the proposed boundary did not correctly align with the wetland/fastland interface. The final recommended map modifies the southern boundary of Unit P04A to remove from the CBRS an area of uplands on the commenter's property. Because the modified Unit P04A boundary in this area removes the uplands that the commenter was concerned about, the Service did not validate the submitted infrastructure claim. There are changes between the proposed and final recommended maps for Unit P04A as a result of this comment.

Unit P05, Conch Island

Comment 26: Local officials commented that Commercial Marina at Conch House appears to be excluded from Unit P05 on the proposed map; however, boat slips have been added since then and they want to know if those additional slips will also be excluded from the unit.

Service Response to Comment 26:

The Service has reviewed the submitted information and the 2013 base map imagery. The Service generally recommends the exclusion of large marinas from the CBRS. The final recommended map modifies the boundary of Unit P05 to remove the more recently constructed portions of the marina from the area recommended for addition to the unit. See Issue 15 in Chapter 4 for more information about the Service's mapping protocols for docks, piers, and marinas. There are changes

between the proposed and final recommended maps for Unit P05 as a result of this comment.

Comment 27: Local officials submitted comments concerning the difference in buffering along the Matanzas River at the Bridge of Lions. On the east side of the river, there is a buffer between the bulkhead and the proposed boundary for Unit P05, but on the west side, there is no buffer. The local officials requested that a buffer be added to the west side in case Federal funds are needed to rebuild the bulkhead.

Service Response to Comment 27:

The proposed maps applied an approximately 50 foot buffer to developed shorelines in order to avoid the inadvertent inclusion of development within the CBRS, but only considered the presence of walled and roofed structures and not the presence of bulkheads or roads. However, after consideration of the comments, the Service believes that a reasonable definition of a developed shoreline would include bulkheads and roads that run parallel to and closely follow (or are coincident with) the shoreline. The final recommended map modifies the boundary of Unit P05 to add a buffer of about 20 feet on the west side of the Matanzas River and reduce the buffer on the east side to about 20 feet. See Issue 16 in Chapter 4 for more information about the Service's mapping protocol for shoreline and development feature buffering. There are changes between the proposed and final recommended maps for Unit P05 as a result of this comment.

Comment 28: Local officials commented that the parking area at the Vilano Beach Boat Ramp has been extended and requested that the extension be excluded from Unit P05 like the rest of the parking lot. They state that this is a park area and Federal grants are used for the park from time to time.

Service Response to Comment 28:

The Service has reviewed the submitted information and the

2013 base map imagery. The parking area extension at the Vilano Beach Boat Ramp is in an area that was proposed for addition to Unit P05. The Unit P05 proposed boundary in that area was intended to follow the wetland/fastland interface. Therefore, the final recommended map modifies the boundary of Unit P05 to remove the parking area extension from the area recommended for addition to the unit and follow the current wetland/fastland interface. There are changes between the proposed and final recommended maps for Unit P05 as a result of this comment.

Comment 29: Local officials submitted a comment asking whether the proposed Unit P05 boundary was intended to include the temporary bridge north of the Bridge of the Lions.

Service Response to Comment 29: The final recommended map modifies the boundary of Unit P05 to add an appropriate buffer along the Bridge of the Lions. In cases where the CBRS boundary follows a bridge, an appropriate buffer (about 20 feet) is applied between the bridge and the boundary. Additional visible bridge infrastructure (e.g., fenders) is generally excluded but not buffered. This protocol is not intended to allow for existing bridges (which are currently not within the CBRS) to be expanded, but rather to ensure that the structure, as it existed at the time the adjacent area was included within the CBRS, is clearly outside of the unit. See Issue 16 in Chapter 4 for more information about the Service's mapping protocol for shoreline and development feature buffering. There are changes between the proposed and final recommended maps for Unit P05 as a result of this comment.

Temporary bridges are generally not taken into consideration when determining where to place the CBRS boundary. Since this comment was received, the temporary bridge north of the Bridge of Lions has been demolished.

Unit P05P, Conch Island

Comment 30: Local officials submitted comments regarding five different areas of concern where it appears that the proposed boundaries of Unit P05P do not precisely follow the boundaries of the underlying park, but rather include small pieces of both publicly (e.g., roads, road rights-of-way) and privately owned areas. These areas of concern are located along Pope Road, Santander Street, Hernandez Boulevard, Anastasia Park Drive, and the San Jose Forest subdivision. The commenters requested that the Service review these areas.

Service Response to Comment 30: The Service has reviewed the submitted information and the 2013 base map imagery. Minor adjustments based on the updated imagery were made to the final recommended map to better fit the boundary of Unit P05P to the underlying features they were intended to follow, such as roads and park boundaries, and to remove the small pieces of privately owned areas. There are changes between the proposed and final recommended maps for Unit P05P as a result of this comment.

Roads and road rights-of-way are included within OPAs throughout the CBRS. There are no CBRA prohibitions affecting Federal funding or financial assistance for road construction and/or maintenance within OPAs. Remapping OPAs to exclude all roads and road rights-of-way would be resource intensive, impractical, and unnecessary.

Unit P08, Ponce Inlet

Comment 31: Local officials requested that the private development south of Smyrna Dunes Park that is currently within Unit P08 be removed based on an infrastructure claim (i.e., whether a full complement of infrastructure including roads, wastewater disposal system, electric service, and fresh water supply existed to each lot or building site in the area when it was first included within the

CBRS) and a phased development claim (i.e., whether the area was part of a large single ownership of property that was in the process of being developed under a phased development plan). They also submitted supporting resolutions from the affected homeowners associations.

Service Response to Comment 31: The Service has reviewed the submitted infrastructure and phased development information, and historical imagery and background records for Unit P08. Our review found that though there were some structures on-the-ground and a main trunk line of infrastructure that ran along the length of the unit, the area in which the private development is located still met the CBRA criteria for an undeveloped coastal barrier when it was included within the CBRS in 1982. Therefore, the Service does not recommend removing the development south of Smyrna Dunes Park from the CBRS.

The Service generally considers the on-the-ground conditions at the time an area was included within the CBRS (either by an act of Congress or by an administrative action of the Service that is published in the *Federal Register*). However, in the case of areas that were included by the CBRA of 1982, the Service identified March 15, 1982, as the cutoff date for the Department's analysis of coastal barrier ground conditions.²⁵ In addition, Congress provided a delay to October 1, 1983, for terminating the availability of new Federal flood insurance for structures that were under development but not completed until after March 15, 1982.²⁶

The Service's background record on Unit P08 contains information indicating that the only permanent buildings on the south side of Ponce de Leon Inlet are at the U.S. Coast Guard Reservation, with residential development increasing south of the unit. A January 1982 information summary prepared by the Department's Coastal Barriers Task Force states that the segment of the unit south of the inlet contained a paved road and utility

corridor leading to the U.S. Coast Guard Reservation. In addition, this document indicates that a full complement of infrastructure at each lot and building was not in place and only four structures were on-the-ground at the time the unit was established.

The 1982 CBRS definition and delineation criteria state that:

*The presence on a coastal barrier of a single road, or even through highway, plus associated electric transmission and water and sewer lines in this highway corridor does not constitute the necessary full complement of infrastructure necessary to support development.*²⁷

This is essentially the level of infrastructure that existed in the southern portion of Unit P08 at the time of the initial CBRS designation. This area is also discussed in Volume 14 of the Department's 1988 Report to Congress in the response to public comments section for Unit P08, which says "the area known as 'The Inlet' was undeveloped in 1982 when it was included in the original CBRS."²⁸ For more information on our review of infrastructure claims, see Chapter 6 of this report.

Our review of Unit P08 also considered the density of development on-the-ground when the unit was designated in 1982. The Service's records indicate that the density of development in Unit P08 was below the density threshold and that a full complement of infrastructure was not available on the ground at the time of the unit's designation in 1982. The Service's background record on Unit P08 also indicates that in 1982, a review of the aerial photography dated May 10, 1982, verified the existence of the components of a coastal barrier and confirmed the lack of sufficient structures and other facilities or visible impacts to consider the area developed as defined in the CBRA.

Local officials assert that the development south of Smyrna Dunes Park was planned and permitted at the time of inclusion. However, the

Service considers only development that existed on-the-ground at the time of inclusion. The 1982 CBRS definition and delineation criteria state that:

*Commitments or legal arrangements necessary for and leading toward construction of either structures or infrastructure will not be considered relevant to the development status of coastal barriers except to the degree that they are actually reflected in the existence of structures or infrastructure on the coastal barrier, or portion thereof.*²⁹

In addition, the Service generally does not consider phased development in assessments of areas for removal from the CBRS (see Chapter 6 for additional information concerning the Service's criteria for modifications to the CBRS). Volume 1 of the Department's 1988 Report to Congress states:

*When undeveloped coastal barrier units were identified in 1982... "phased development" was recognized as a special class of developing coastal barrier. Under this concept, minimally developed or undeveloped portions of coastal barriers were excluded from the CBRS if they were planned from the outset for a continuous program of multi-stage development by a single developer and the first stage of the development had already been substantially completed... Some phased developments were excluded in 1982 if a developer could prove that at least one phase of the development exceeding 100 units had been completed and that the developer had viable plans, means, and intent to promptly move forward to construction of the next phase.*³⁰

The Service's assessment found that the subject area does not meet these criteria to be considered as phased development. In addition, because of the difficulties in making consistent determinations about phased development, this has not

been considered in determining development status after 1982.³¹ There are no changes between the proposed and final recommended maps for Unit P08 as a result of this comment.

Unit FL-13P, Spessard Holland Park

Comment 32: Local officials commented that the boundary on the stakeholder concurrence map that they provided to the Service in 2005 does not match the boundary of Unit FL-13P on the proposed map. In particular, the proposed map of Unit FL-13P includes the road rights-of-way, the Indian River, and the Air Force Radar Tracking Station that were excluded on the stakeholder map.

Service Response to Comment 32: The stakeholder concurrence map that local officials signed is used to validate the accuracy of the conservation and/or recreation area boundary as depicted on a base map. This concurrence map does not depict the OPA boundary, but rather helps to ensure that the Service has the best available data with which to delineate the OPA boundary on the CBRS map.

The stakeholder concurrence map does not include water bodies, roads, and road rights-of-way within the property boundary of the conservation and/or recreation area unless such features are part of the conservation/recreation area. However, OPAs often include water bodies, roads, and road rights-of-way because it would be resource intensive, impractical, and unnecessary to exclude them, and the only Federal funding prohibition within OPAs is on Federal flood insurance.

The radar tracking station is included within Unit FL-13P because the property is (1) owned by the Brevard County Parks and Recreation Department and leased to the U.S. Air Force and (2) is too minor from a mapping perspective to exclude from the unit.

There are no changes between the proposed and final recommended maps for Unit FL-13P as a result of this comment.

Unit P09AP, Coconut Point

Comment 33: Local officials commented that the boundary on the stakeholder concurrence map that they provided to the Service in 2005 does not match the boundary of Unit P09AP on the proposed map. In particular, the stakeholder map excluded the road rights-of-way, and these areas are included within Unit P09AP on the proposed map.

Service Response to Comment 33:

The stakeholder concurrence map that local officials signed is used to validate the accuracy of the conservation and/or recreation area boundary as depicted on a base map. This concurrence map does not depict the OPA boundary, but it ensures that the Service has the best available data with which to delineate the OPA boundary on the CBRS map.

The stakeholder concurrence map does not include roads and road rights-of-way within the property boundary of the conservation and/or recreation area unless such features are part of the conservation/recreation area. However, OPAs often include roads and road rights-of-way because it would be resource intensive, impractical, and unnecessary to exclude them, and the only Federal funding prohibition within OPAs is on Federal flood insurance. There are no changes between the proposed and final recommended maps for Unit P09AP as a result of this comment.

Unit P10A, Blue Hole and Unit FL-14P, Pepper Beach

Comment 34: Individuals and an advocacy organization provided comments regarding ownership and management of areas in the vicinity of Queens Cove subdivision. The commenters also seem to object to the inclusion within the CBRS of properties within Queens Cove and are concerned that the addition to the CBRS of the channels around Queens Cove will affect the dredging of these channels. The commenters also felt there was inadequate public notice of the pilot project and requested more time for the public comment period.

Service Response to Comment 34:

The proposed map for Units P10A and FL-14P does not add to the CBRS any additional properties in Queens Cove subdivision except for a minor area on Kings Island. Although this area is not held for conservation and/or recreation, it is included within OPA Unit FL-14P because it qualifies as an undeveloped coastal barrier and it is impractical to delineate it separately as a System Unit.

There are some undeveloped lots in Blocks 10 and 11 of Queen’s Cove that have been within Unit P10A since 1982. The Service generally will not recommend a removal from the CBRS unless there is clear and compelling evidence that an error in boundary delineation was made. When assessing whether an area may be appropriate for removal, the Service considers the following criteria:

- (1) the level of development on-the-ground at the time the area was included within the CBRS (i.e., the number of structures or complement of infrastructure on-the-ground exceeded the threshold for the area to be considered undeveloped)³² and/or
- (2) the location of geomorphic, cultural, and development features on-the-ground at the time the area was included within the CBRS (i.e., the CBRS boundary lines on the maps do not precisely follow the underlying features they were intended to follow on-the-ground).

The lots in Blocks 10 and 11 do not meet either of these criteria for removal. They were undeveloped when they were included within the CBRS, and the CBRS boundary to the north of the area follows the break-in-development. The break-in-development is where development ended when the area was originally included within the CBRS (i.e., the area immediately adjacent to the last structure in a cluster or row of structures, or at

the property parcel boundary of the last structure).³³

There is an exception in the CBRA for the maintenance of existing Federal navigation channels.³⁴ Determinations regarding whether specific projects or actions meet an exception to the CBRA’s limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service’s local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA’s limitations on Federal expenditures, and exceptions to those limitations, is available on the Service’s website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>. For channels within OPAs, there are no CBRA prohibitions affecting Federal funding or financial assistance (the only prohibition in OPAs applies to flood insurance).

Regarding the comment about public notice for the pilot project, the Service initially announced a 90-day comment period that was subsequently extended to 120 days. The Service also held virtual public meetings and published announcements in local papers. For a full description of the public review outreach efforts, see Chapter 3.

There are no changes between the proposed and final recommended maps for Units P10A and FL-14P as a result of this comment.

Comment 35: Local officials are concerned about the proposed expansion of Unit P10A to include the Fort Pierce Inlet and the Port of Fort Pierce, which are parts of a Federally maintained deep-water port established in 1935. A significant portion of the port and inlet areas are already developed and future development and redevelopment is anticipated. Other concerns are that dredging maintenance is performed by the U.S. Army Corps of Engineers using Federal funds and local

officials may seek Federal funds for future improvements such as shoreline stabilization and a sand bypassing facility. Local officials and a business owner are also concerned about the proposed addition to the CBRS of the Harbortown Marina, a large private marina constructed in the early 1980's and located in the port area.

Service Response to Comment 35: The Service reviewed the submitted materials and other State and county data and determined that due to the existing level of development, the port, inlet, and marina should not be added to System Unit P10A. Instead, the final recommended boundary for OPA Unit FL-14P is modified in accordance with the Service's pilot project channel mapping protocol to be in the center of the channel of the inlet and port turning basin. This modification will not affect Federally funded activities within channels because the CBRA's only Federal funding prohibition within OPAs applies to flood insurance. The boundary of Unit P10A is modified to be north of State Route A1A. See Issue 12 in Chapter 4 for more information about the Service's protocol for mapping of channels within the CBRS. There are changes between the proposed and final recommended maps for Units P10A and FL-14P as a result of this comment.

Comment 36: Local officials requested that all St. Lucie County parks and preserves that are identified on the materials they provided be classified as OPAs.

Service Response to Comment 36: The CBRS contains two types of units, System Units and OPAs. System Units are generally comprised of privately held areas. OPAs are generally comprised of areas held for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. In carrying out the pilot project, the Service noted cases where areas held for conservation and/or recreation are located within System Units, as well as cases where privately held areas (that are not inholdings) are located within OPAs. Some County parks and

preserves are already within the proposed boundary of OPA Unit FL-14P; however, some areas that are County parks were proposed for reclassification from the OPA to System Unit P10A or were already within Unit P10A.

When the Service comprehensively remapped the CBRS units in the pilot project, the conservation and/or recreation areas within the unit were identified and the history of those areas was evaluated to determine whether they were appropriately classified as System Unit or OPA. The Service's remapping protocol at the time of the pilot project generally recommended reclassification from System Unit to an OPA, or vice versa, depending on when the particular area was included within the CBRS and whether the area was held for conservation/recreation at the time it was included.³⁵

In preparing the proposed maps, the Service made every effort to identify the conservation and/or recreation areas within Units P10A and FL-14P and evaluate their history to determine whether such areas were appropriately classified as System Unit or OPA. Although numerous conservation and/or recreation areas are located within existing Unit P10A, none were held for conservation and/or recreation when the areas were first included within the CBRS. Therefore, such areas in Unit P10A are not recommended for reclassification to OPA.

The area within existing Unit FL-14P is a complex patchwork of State and county owned parks and preserves as well as wetland areas without clear ownership information. The Service used the submitted materials and other State and county data to identify additional conservation and/or recreation areas that are appropriate to remain within or be added to the OPA. The boundaries of Unit FL-14P on the final recommended map have been modified to include within the unit most of the County parks and preserves that were identified by local officials. On the final recommended map, any parks within existing Unit FL-14P are not reclassified to System Unit P10A

(as shown on the proposed map) with the exception of three small mosquito control areas, which are too small to reclassify. There are changes between the proposed and final recommended maps for Units P10A and FL-14P as a result of this comment.

Lessons learned through the course of the pilot project and other comprehensive remapping projects resulted in a revision to the Service's protocol regarding System Unit versus OPA classification for future mapping projects. See Issue 11 in Chapter 4 for more information about reclassifications within the CBRS and Chapter 6 for additional information concerning the Service's guiding principles and criteria for modifications to the CBRS.

Unit P11, Hutchinson Island

Comment 37: Local officials commented that the northern proposed boundary of Unit P11 that lies along Blue Heron Boulevard could be straightened at the point it reaches the dunes on the Atlantic Ocean side of the barrier island to remove from the CBRS the beachfront dune property in front of completed development (Oceanhouses at Southpointe Condominiums).

Service Response to Comment 37: The area in question was first included within the CBRS in 1982, and the developed area to the west of the area in question was removed from the CBRS in 1990. The Service generally will not recommend a removal from the CBRS unless there is clear and compelling evidence that an error in boundary delineation was made. When assessing whether an area may be appropriate for removal, the Service considers the following criteria:

- (1) the level of development on-the-ground at the time the area was included within the CBRS (i.e., the number of structures or complement of infrastructure on-the-ground exceeded the threshold for the area to be considered undeveloped)³⁶ and/or

(2) the location of geomorphic, cultural, and development features on-the-ground at the time the area was included within the CBRS (i.e., the CBRS boundary lines on the maps do not precisely follow the underlying features they were intended to follow on-the-ground).

The area in question does not meet either of these criteria. It was undeveloped when it was included within the CBRS in 1982 and is still undeveloped, and there is not a clear error in the depiction of the underlying features on the original base map that would have resulted in the unintentional inclusion of this area in the CBRS. There are no changes between the proposed and final recommended maps for Unit P11 as a result of this comment.

Comment 38: Local officials commented that the excluded area boundary adjacent to the South Hutchinson Island Fire Station No. 8 could be extended to exclude the entire facility from Unit P11 because the fire station is for public safety and not for encouraging additional development.

Service Response to Comment 38: The excluded area where the South Hutchinson Island Fire Station No. 8 is located was expanded south on the proposed map to remove development (including the fire station) that was on the ground when the area was included within the CBRS. To determine whether this removal was appropriate, the Service reviewed historical records and imagery and considered our criteria for removing areas from the CBRS.

The southern boundary of the excluded area on the final recommended map generally follows the parcel boundary. Most of the South Hutchinson Island Fire Station No. 8 property, including the structure, is recommended for removal from the CBRS; only a minor portion of the property will remain within the CBRS. There are no changes between the proposed and final recommended maps for Unit P11 as a result of this comment.

Comment 39: Local officials commented that the excluded area boundary adjacent to the South Hutchinson Wastewater Treatment Plant could be extended to exclude the entire facility from Unit P11 because of the environmental benefits gained from the plant.

Service Response to Comment 39: The Service reviewed historical imagery from 1982 and found that the area south of the South Hutchinson Island Fire Station No. 8 property where the South Hutchinson Wastewater Treatment Plant is located was undeveloped when it was included within the CBRS. The Service generally will not recommend a removal from the CBRS unless there is clear and compelling evidence that an error in boundary delineation was made. When assessing whether an area may be appropriate for removal, the Service considers the following criteria:

- (1) the level of development on-the-ground at the time the area was included within the CBRS (i.e., the number of structures or complement of infrastructure on-the-ground exceeded the threshold for the area to be considered undeveloped)³⁷ and/or
- (2) the location of geomorphic, cultural, and development features on-the-ground at the time the area was included within the CBRS (i.e., the CBRS boundary lines on the maps do not precisely follow the underlying features they were intended to follow on-the-ground).

The area in question does not meet either of these criteria. It was undeveloped when it was included within the CBRS in 1982, and the CBRS boundary to the north of the area follows a break-in-development. The break-in-development is where development ended when the area was originally included within the CBRS (i.e., the area immediately adjacent to the last structure in a cluster or row of structures, or at the property parcel boundary of the last structure).³⁸ There are no changes between the proposed and final

recommended maps for Unit P11 as a result of this comment.

Comment 40: Local officials asked whether a CBRA consistency consultation with the Service would be required for a wind turbine construction project that is being proposed by Florida Power and Light near the Hutchinson Island Nuclear Power Plant.

Service Response to Comment 40: There is an exception in the CBRA for the use or facility necessary for the exploration, extraction, or transportation of energy resources, which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.³⁹ Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Comment 41: Local officials requested that all St. Lucie County parks and preserves that are identified on the maps they provided to the Service with their comment be classified as OPAs.

Service Response to Comment 41: The CBRS contains two types of units, System Units and OPAs. System Units are generally comprised of privately held areas. OPAs are generally comprised of areas held for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. In carrying out the pilot project, the Service noted cases where areas held for conservation and/or recreation are located within System Units, as well as cases where privately held areas (that are not inholdings) are located within

OPAs. Many of the identified parks and preserves are currently located within Unit P11.

When the Service comprehensively remapped the CBRS units in the pilot project, the conservation/recreation areas within the unit were identified and the history of those areas was evaluated to determine whether they were appropriately classified as System Unit or OPA. The Service's remapping protocol at the time of the pilot project generally recommended reclassification from System Unit to an OPA, or vice versa, depending on when the particular area was included within the CBRS and whether the area was held for conservation/recreation at the time it was included.⁴⁰

Although numerous conservation/recreation areas are located within Unit P11, Frederick Douglass Park is the only area that was held for conservation/recreation at the time it was included within the CBRS. This park is reclassified to OPA on both the proposed and final recommended maps; however, the other conservation/recreation areas will remain within the System Unit. Three parcels identified by local officials that are south of Unit P11 and not currently within the CBRS are not recommended for addition to the CBRS at this time due to their size and location. There are no changes between the proposed and final recommended maps for Unit P11 as a result of this comment.

Lessons learned through the course of the pilot project and other comprehensive remapping projects resulted in a revision to the Service's protocol regarding System Unit versus OPA classification for future mapping projects. See Issue 11 in Chapter 4 for more information about reclassifications within the CBRS and changes to the Service's OPA mapping protocol and Chapter 6 for additional information concerning the Service's guiding principles and criteria for modifications to the CBRS.

Comment 42: A homeowners association requested help in saving a property that contains mostly wetlands from being developed.

The proposed development is known as Kristen's Cove and is located on South Hutchinson Island, approximately 140 feet north of the Martin County line.

Service Response to Comment 42:

The property in question is approximately ten acres and is located more than a mile away from the nearest CBRS unit (Unit P11). The Service does not recommend adding this property to the CBRS because although the property itself is an undeveloped area, it is behind a portion of the coastal barrier that is entirely developed.

Unit FL-39, Tavernier Key

Comment 43: Local officials requested that Community Harbor be removed from the proposed addition to Unit FL-39 because this harbor has been used historically as an anchorage for liveaboards and has been considered by Monroe County for establishment of a managed mooring field. In the future, the County may desire to seek Federal funding for the mooring field development and maintenance.

Service Response to Comment 43:

A portion of Community Harbor has been within Unit FL-39 since 1993. More of the harbor is recommended for addition to the CBRS because it is qualifying associated aquatic habitat. In determining the development status of coastal barriers, the Service does not consider development plans, commitments, legal arrangements, or financial commitments related to development except to the degree that they are actually reflected in the existence of structures or infrastructure on-the-ground. See Chapter 6 for additional information concerning the Service's criteria for modifications to the CBRS. There are no changes between the proposed and final recommended maps for Unit FL-39 as a result of this comment.

Unit FL-45, Deer/Long Point Keys

Comment 44: Local officials requested that the disturbed/developed area north of U.S. Highway 1, which includes a medical

examiner's office, a fire training facility, an electrical relay station, and a service road, be excluded from the proposed addition to Unit FL-45 because it is already developed.

Service Response to Comment 44:

The final recommended map modifies the boundary of Unit FL-45 to remove the medical examiner's office, fire training facility, electrical relay station, and a portion of the service road from the area recommended for addition to the unit. The Service inadvertently included this existing development within the proposed addition to Unit FL-45 because it was not visible on the 1999 base map imagery used for the proposed map. There are changes between the proposed and final recommended maps for Unit FL-45 as a result of this comment.

Unit P17A, Bowditch Point

Comment 45: Local officials commented that it is critical that Federal resources continue to be available for the maintenance of Federal channels. The commenters also believe that the Service should recognize navigation channels as pre-existing developed infrastructure to eliminate any confusion or potential problems in interpreting where a channel can be dredged, and requested that the boundaries be modified to the landward edge of the channel rights-of-way.

Service Response to Comment 45:

Channels are part of the associated aquatic habitat of coastal barriers and have been included as such throughout the CBRS. In carrying out the pilot project, the Service noted that the Department's 1982 and 1988 published guidance⁴¹ have not been consistently applied to the CBRS maps and we modified the boundaries on the proposed maps to include the entire width of the channel within the CBRS unit. The northern and eastern boundaries of Unit P17A on the proposed map were modified to include the entire barrier spit at the northern end of Estero Island and its associated aquatic habitat within Unit P17A. The associated aquatic habitat (including channels) had been within adjacent Unit FL-67 before this

modification. The channels in Unit P17A have been within the CBRS either since 1982 or 1990, and in Unit FL-67 since 1990. Dredging projects within these units that do not meet any CBRA exceptions have been prohibited from receiving Federal funds for 25 years or more and will continue to be prohibited from receiving Federal funds even if no modifications or additions are made to the existing units. See Issue 12 in Chapter 4 for more information about the Service's protocol for mapping of channels within the CBRS. There are no changes between the proposed and final recommended maps for Unit P17A as a result of this comment.

There is an exception in CBRA for the maintenance of existing Federal navigation channels.⁴² Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Comment 46: Local officials are concerned about the Service's protocol regarding navigation channels in the 2008 pilot project report. In this report, there is a discussion on the results of channel boundary mapping, which states that the effect of the proposed changes placing additional channel area within System Units would be to prohibit the use of Federal financial assistance for dredging and other projects. The commenters believe this is inconsistent with the next sentence, which states that the Service does not anticipate a significant impact due to the change in this mapping protocol.

Service Response to Comment 46: Channels are part of the associated aquatic habitat of coastal barriers and have been included as such throughout the CBRS.⁴³ Additional channel areas are recommended for inclusion within System Units through the pilot project, and such areas would be subject to CBRA's prohibitions if the final recommended maps are adopted by Congress. However, the Service believes that the impact of these additions is not significant because there are many cases in the affected areas where about half of the channels' width is already included within the CBRS and they therefore are already subject to the CBRA's prohibitions. In addition, there are exceptions in the CBRA for existing Federal navigation channels and related structures. Congress determined that it would be sufficient to exempt these channels from the CBRA's prohibitions on Federal expenditures rather than exclude or remove them from the CBRS.⁴⁴ See Issue 12 in Chapter 4 for more information about the Service's protocol for mapping of channels within the CBRS.

Units FL-67 and FL-67P, Bunche Beach

Comment 47: Local officials commented that while Units FL-67 and FL-67P are undeveloped, these units do not seem to fit any of the four types of coastal barriers (bay barrier, tombolo, spit, or barrier island), and the definition of a coastal barrier should be amended if the intent is to include additional types of geologic features.

Service Response to Comment 47: While the geologic features that comprise Units FL-67 and FL-67P do not fit within one of the four common categories of coastal barriers listed as examples in the CBRA (i.e., bay barrier, tombolo, barrier spit, or barrier island), these areas are functioning coastal barriers along an undeveloped coast. The units include a depositional geologic feature; are subject to wave, tidal, and wind energies; and protect landward aquatic habitats from direct wave attack.

The legislative history of the CBRA states that "the term 'coastal barrier' is included in the legislation for informational purposes only," and that "this definition is designed to demonstrate the values [sic] of coastal barriers and provide a logical basis for identifying them."⁴⁵ The Service has found nothing in the legislative history of the CBRA indicating that Congress intended the Service to analyze whether an area literally meets the statutory definition of a coastal barrier when making recommendations to Congress for additions to or removals from the CBRS. The only directive that Congress has specifically given the Service when conducting such reviews is that we shall consider whether the area in question met the development criteria at the time that it was (or is) first included in the CBRS.

In general, areas that are inherently vulnerable to coastal hazards (e.g., flooding, storm surge, wind, erosion, and sea level rise) and may reasonably be considered to be coastal barrier features, or related to coastal barrier ecosystems, are rationally related to the purposes of the CBRA. Therefore, these areas may be appropriate for inclusion in the CBRS even if they do not meet all elements of the literal definition of a coastal barrier under CBRA. The Service generally will not recommend the removal of such areas from the CBRS unless there is compelling evidence that a mistake in the delineation of the CBRS boundaries was made as a result of incorrect, outdated, or incomplete information. See Chapter 6 for additional information concerning the Service's criteria for modifications to the CBRS. There are no changes between the proposed and final recommended maps for Units FL-67 and FL-67P as a result of this comment.

Comment 48: Local officials requested that historical aerial imagery be used to determine which docks along Connie Mack Island (an area excluded from the CBRS) were existing at the time the area around the island was included within the CBRS and to exclude any docks in existence prior to that time.

Service Response to Comment 48:

When comprehensively remapping CBRS units, the Service generally applies a 20 foot buffer (i.e., leaving space between the boundary and the feature it is intended to follow) along developed shorelines to ensure that structures and/or infrastructure (e.g., walled and roofed structures, roads, and bulkheads) located along the shoreline are not inadvertently included within the CBRS. Large marinas that existed when the area was originally included within the CBRS are generally excluded from the CBRS. However, because docks, piers, and other similar structures are located throughout the waterways that are part of the associated aquatic habitat of the CBRS, and these structures frequently change in size and shape over time, it would be impractical to map CBRS units to exclude them. See Issue 15 in Chapter 4 for more information about the Service’s mapping protocols for docks, piers, and marinas.

The Service has reviewed historical aerial imagery of the area around Connie Mack Island and found that a large commercial marina located on the southern side of the island existed at the time the area was included within the Unit FL-67. There are changes between the proposed and final recommended maps for Unit FL-67 as a result of this comment. The final recommended map modifies the boundary of the unit to remove this marina from the CBRS.

Comment 49: A developer that owns property within Unit FL-67 submitted comments that are supportive of the proposed addition of some of the undeveloped lands to, and the proposed removal of developed areas from, the CBRS. The commenter would like several additional areas removed from the CBRS which are described below.

- (a) McGregor Boulevard and the Sanibel Causeway bridge – The commenter believes that McGregor Boulevard and the Sanibel Causeway should be treated like U.S. Route 1 in

the Florida Keys, which has an exemption in the CBRA for not only maintenance, replacement, reconstruction, or repair, but also expansion. Like Route 1, McGregor Boulevard and the Sanibel Causeway are the sole means of exiting Sanibel and Captiva Islands during hurricane evacuations.

- (b) Property owned by Lee County (including a toll facility and boat ramp) adjacent to McGregor Boulevard – The commenter states that there are extensive County-owned facilities and structures along McGregor Boulevard and believes that these areas should be removed from the CBRS because they are developed.
- (c) Sanibel Harbour Resort tennis complex and stadium – The commenter believes that the tennis complex and stadium should be removed from the CBRS because they existed when the area was included within the CBRS.
- (d) A property known as Sanibel Passage, which is owned by the developer – In support of the request to remove the Sanibel Passage property, the developer submitted a report, prepared by Dr. Donald F. McNeill for MLG Island Passage LLC, on the geomorphology of the area. This report states that the natural processes of the barrier have been modified to an extent that impedes the long-term perpetuation of the coastal barrier system. The commenter states that the area north of McGregor Boulevard, where the Sanibel Passage property is located, no longer functions as a coastal barrier because this area has been significantly altered by man’s activities, including the dredging of mosquito canals and clearing and draining of wetlands.
- (e) A bait and tackle shop (which was torn down and replaced by a restaurant in 2014) – The commenter believes that because

this property was developed before it was included within the CBRS, it should be removed from the CBRS.

Local officials also commented that they would like the County-owned facilities near the Sanibel Causeway, including a boat ramp, toll facility, and a portion of McGregor Boulevard removed from the CBRS.

Service Response to Comment 49:

The Service has reviewed the submitted information, our historical background records for Unit FL-67, and historical aerial imagery of the area. Our response to each of the areas that the commenter seeks to remove from the CBRS is below.

McGregor Boulevard and the Sanibel Causeway bridge

(response to (a) above) – There is an exception in the CBRA for the maintenance, replacement, reconstruction, or repair; but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.⁴⁶ There is an additional exception for roads that are not essential links in a larger network or system that also allows for the expansion of U.S. Route 1.⁴⁷ A 1990 U.S. Senate report discusses the reason behind the creation of this exception in the CBRA for the expansion of U.S. Route 1:

*U.S. Route 1 presents a special case because it provides the only access to and egress from the already heavily developed chain of islands which make up the Florida Keys. Any funds for expansion of this highway should be used for public safety purposes.*⁴⁸

There is similar language in a 1990 U.S. House of Representatives report.⁴⁹ The Service agrees with the Congress that allowing expansion of U.S. Route 1 is a special case for the Florida Keys, involving a long distance along a heavily developed chain of islands. In most other cases where a road is the only egress from an island (e.g., Florida State Road A1A along the Atlantic coast),

the Service does not recommend removing the road from the CBRS because the exceptions in the CBRA would allow most road projects to use Federal funds, just not projects involving expansions. There are no changes between the proposed and final recommended maps for Unit FL-67 as a result of this comment.

Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Development on-the-ground at the time of inclusion within the CBRS (response to (b), (c), and (e) above)

– The commenter states that there are several areas within Unit FL-67 that were developed at the time the areas were included within the CBRS: the County-owned property adjacent to McGregor Boulevard, the Sanibel Harbour Resort tennis complex and stadium, and the former bait and tackle shack. The commenter believes that these areas should be removed from the CBRS.

To be considered developed under the CBRA, a coastal barrier must have a density of one structure for every five acres of fastland or have a full complement of infrastructure on-the-ground to each lot or building site at the time the area is included within the CBRS. Although the development that the commenters seek to remove from the CBRS was on-the-ground when the area was included within the CBRS, the structures were few and scattered at a density well below the threshold. When adopting the CBRA, Congress did not intend to exclude a relatively small number of scattered structures from CBRS

units even if a full complement of infrastructure was available to them. Instead, the maps adopted by Congress sought to exclude intensively capitalized, privately financed subdivisions with many lots where a full complement of infrastructure was available to each lot. The rationale in excluding these subdivisions was that when private funds were used to provide a full complement of infrastructure, it was expected the construction of the structures was imminent.⁵⁰ Lands without this intensive level of infrastructure were included in the CBRS. Our review found that the area met the CBRA criteria for an undeveloped coastal barrier when it was included within the CBRS. Therefore, the Service recommends that these areas remain within Unit FL-67. For more information on our review of infrastructure claims, see Chapter 6 of this report. There are no changes between the proposed and final recommended maps for Unit FL-67 as a result of this comment.

Sanibel Passage property (response to (d) above)

– The commenter states that the Sanibel Passage property was significantly altered by the dredging of mosquito canals and the clearing and draining of the property prior to its inclusion within the CBRS. The commenter indicates that McGregor Boulevard, which runs east-west through the center of Unit FL-67, is situated on an elevated dike and therefore, the areas north of this road (including the Sanibel Passage property) no longer function as a coastal barrier. One of the key points that the commenter cites for why the areas north of the road do not function as a coastal barrier is that the structures and human activities on these features significantly impede geomorphic and ecological processes. In addition, the commenter submitted the McNeill report in support of the claim that these areas do not function as a coastal barrier because of the extensive modifications.

The consideration of human activities is a part of the CBRA definition of an undeveloped coastal barrier:

- (1) *The term “undeveloped coastal barrier” means—*
- (A) *a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—*
 - (i) *is subject to wave, tidal, and wind energies, and*
 - (ii) *protects landward aquatic habitats from direct wave attack; and*
 - (B) *all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters;*
- but only if such feature and associated habitats contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes.*⁵¹

However, the significance that human activities have in considering whether an area is undeveloped under the CBRA is limited. The Department's May 1983 *Final Environmental Statement Undeveloped Coastal Barriers* report contains an explanation in how this is applied:

All coastal barriers are affected to some degree by human activities. Even completely undeveloped coastal barriers often have a considerable history of human use and occupancy, which have from time to time affected environmental quality, vegetation, wildlife, and other factors. For the most part, these impacts have been minor and well within the capability of the coastal barrier ecosystem to mitigate or repair in a short period of time. Significant impacts--that is, those which interfere with the geological and ecological processes responsible for maintaining coastal barrier

*ecosystems--are nearly always associated, either directly or indirectly, with intensive development involving large capital investments on the site.*⁵²

If a coastal barrier contains few man-made structures but is subject to significant levels of human activity such as the intensive development associated with a large condominium development, it is considered developed. The 1983 report also states:

*The wording of this section requires evaluation of human impacts only in cases where structures are present; completely undeveloped coastal barriers are not evaluated (presumably on the assumption that, without any structures, the probability of significant human impacts on geological and ecological processes is extremely low). Although human activities (such as the destruction of dunes) which significantly affect geological processes almost always have significant impacts on ecological processes as well, the converse is less often true. Thus, ditching of tidal marshes, which can have significant ecological impacts by damaging or destroying habitat for numerous fish and wildlife species, may have only minor impacts on geologic processes. The existence of ecologically adverse activities alone would not cause a coastal barrier to be excluded for purposes of denying flood insurance coverage.*⁵³

This 1983 report goes on to say that the impacts of human activities are considered in cases where the development density is less than the threshold for identifying an undeveloped coastal barrier, but not in cases where the coastal barrier is completely undeveloped. Significant impacts on both geological and ecological processes must be present, and the area must contain

some development in order for it to be a factor.

The Service has reviewed the submitted information and historical imagery and background records for Unit FL-67. Our review found that the area within Unit FL-67 had a relatively small number of scattered structures in 1990. McGregor Boulevard, which runs through the unit, had (and still has) few structures along it. In addition, there are no structures on-the-ground within the Sanibel Passage property now nor where there at the time the area was included within the CBRS. The presence of mosquito canals and McGregor Boulevard are insufficient to warrant exclusion; such features are typical for coastal areas and prevalent through the CBRS. The impacts of human activities have been minor and well within the capability of the coastal barrier ecosystem to mitigate or repair in a short period of time. The area within Unit FL-67 met the density and level of infrastructure criteria to be considered undeveloped at the time it was included within the CBRS. There are no changes between the proposed and final recommended maps for Units FL-67 and FL-67P as a result of this comment.

Comment 50: Local officials commented that it is critical that Federal resources continue to be available for the maintenance of Federal channels. The commenters also believe that the Service should recognize navigation channels as pre-existing developed infrastructure to eliminate any confusion or potential problems in interpreting where a channel can be dredged, and requested that the boundaries be modified to the landward edge of the channel rights-of-way.

Service Response to Comment 50: Channels are part of the associated aquatic habitat of coastal barriers and have been included as such throughout the CBRS. In carrying out the pilot project, the Service noted that the Department's 1982 and 1988 published guidance⁵⁴ have not been consistently applied to the CBRS maps, and we modified the boundaries on the proposed maps to include the entire width of the channel within the CBRS unit.

Although there have been some additions of channels to the CBRS in Unit FL-67, most channels in the unit have been within the CBRS since 1990. Dredging projects within the unit that do not meet any CBRA exceptions have been prohibited from receiving Federal funds for more than 25 years and will continue to be prohibited from receiving Federal funds even if no modifications or additions are made to the existing unit. There are no changes between the proposed and final recommended maps for Unit FL-67 as a result of this comment. See Issue 12 in Chapter 4 for more information about the Service's protocol for mapping of channels within the CBRS.

There is an exception in CBRA for the maintenance of existing Federal navigation channels.⁵⁵ Determinations regarding whether specific projects or actions meet an exception to the CBRA's limitations on Federal expenditures are made on a case by case basis. The Federal funding agency must consult with the Service's local Ecological Services Field Office prior to committing funds for a project or action within or affecting a System Unit of the CBRS. Information concerning the CBRA's limitations on Federal expenditures, and exceptions to those limitations, is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Consultations/Limitations-and-Exceptions.html>.

Comment 51: Local officials are concerned about the Service's protocol regarding navigation channels in the 2008 pilot report. In this report, there is a discussion on the results of channel boundary mapping, which states that the effect of the proposed changes placing additional channel area within System Units would be to prohibit the use of Federal financial assistance for dredging and other projects. The commenters believe this is inconsistent with the next sentence, which states that the Service does not anticipate a significant impact due to the change in this mapping protocol.

Service Response to Comment 51:

Channels are part of the associated aquatic habitat of coastal barriers and have been included as such throughout the CBRS.⁵⁶ Additional channel areas are recommended for inclusion within System Units through the pilot project, and such areas would be subject to CBRA's prohibitions if the final recommended maps are adopted by Congress. However, the Service believes that the impact of these additions is not significant because there are many cases in the affected areas where about half of the channels' width is already included within the CBRS and they therefore are already subject to the CBRA's prohibitions. In addition, there are exceptions in the CBRA for existing Federal navigation channels and related structures. Congress determined that it would be sufficient to exempt these channels from the CBRA's prohibitions on Federal expenditures rather than exclude or remove them from the CBRS.⁵⁷ See Issue 12 in Chapter

4 for more information about the Service's protocol for mapping of channels within the CBRS.

Unit P21, Bocilla Island

Comment 52: The Service received two comments from individuals regarding the removal of properties from Unit P21. One commenter supported the Service's proposed removal from the CBRS of a structure within the Eagle Preserve Estates subdivision. Another commenter requested the removal from the CBRS of 22 homes and numerous vacant lots between an area called "the Preserve" and the CBRS boundary based on an infrastructure claim.

Service Response to Comment 52: The Service does not recommend modifying the boundary for Unit P21 to remove from the CBRS 22 homes and numerous vacant lots between "the Preserve" and the CBRS boundary. The existing Unit P21 boundary in this area was drawn

at the break-in-development that existed at the time it was included within the CBRS. The break-in-development is where development ended when the area was originally included within the CBRS (i.e., the area immediately adjacent to the last structure in a cluster or row of structures, or at the property parcel boundary of the last structure).⁵⁸ Although the commenter claimed that the area should be removed based on existing infrastructure, no supporting documentation was submitted to show that a full complement of infrastructure existed in this area. The commenter indicated that the area had dirt roads; however the CBRA infrastructure criteria require roads with a reinforced road bed in order to consider an area developed.⁵⁹ The Service's assessment found that at the time of inclusion within Unit P21, the area that the commenter seeks to remove from the CBRS was undeveloped. There are no changes between the proposed and final recommended maps for Unit P21 as a result of this comment.

¹ Units FL-64P, L07, L08, and L09 have been removed from the pilot project because comprehensively revised maps for these areas have been adopted by Congress. The Service's proposed map for Unit FL-64P was made effective via Pub. L. 110-419 on October 15, 2008. No comments were received during the comment period related to Unit FL-64P.

The Service's final recommended maps for Units L07, L08, and L09 were made effective via Pub. L. 113-253 on December 18, 2014. The Service did receive comments during the comment period related to all three of these units. The Service assessed these comments and made any warranted modifications on the final recommended maps, but because the maps have already been adopted, the Service has not addressed the comments related to these units in this Appendix.

² See endnote 10 in Chapter 5.

³ See endnote 15 in Chapter 4.

⁴ 16 U.S.C. 3503(g)(2)

⁵ See endnote 12 in Chapter 6.

⁶ See endnote 21 in Chapter 4.

⁷ See endnote 5 in Chapter 4.

⁸ 16 U.S.C. 3505(a)(2) is an exception for "The maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction." Federal expenditures for such projects and activities that meet this exception may be made following consultation with the Service. According to 16 U.S.C. 3505(b), "a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System Unit or portion of the System Unit was included within the CBRS."

⁹ See endnote 6 in Chapter 6.

¹⁰ Page II-13 of: DOI, Coastal Barriers Study Group. 1983. Final environmental statement: Undeveloped coastal barriers. Washington, D.C.

¹¹ See endnote 10 above.

¹² See endnote 2 in Chapter 1.

¹³ 16 U.S.C. 3505(a)(3) is an exception for "The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system." Federal expenditures for such projects and activities that meet this exception may be made following consultation with the Service.

Appendix E: Responses to Unit-Specific Public Comments

- ¹⁴ 16 U.S.C. 3505(a)(6)(F) is an exception for “Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities.” Projects must also be consistent with the purposes of the CBRA to meet this exception. Federal expenditures for such projects and activities that meet this exception may be made following consultation with the Service.
- ¹⁵ See endnote 3 in Chapter 5.
- ¹⁶ See endnote 5 in Chapter 4.
- ¹⁷ See endnote 15 in Chapter 4.
- ¹⁸ See endnote 3 in Chapter 5.
- ¹⁹ See endnote 21 in Chapter 4.
- ²⁰ See endnote 8 above.
- ²¹ See endnote 25 in Chapter 1.
- ²² See endnote 8 above.
- ²³ See endnote 21 in Chapter 4.
- ²⁴ See endnote 8 above.
- ²⁵ See endnote 12 in Chapter 6.
- ²⁶ 42 U.S.C. 4028(a)
- ²⁷ See endnote 3 in Chapter 5.
- ²⁸ Page 61 of: DOI, Coastal Barriers Study Group. 1988. Report to Congress: Coastal Barrier Resources System with recommendations as required by Section 10 of the Public Law 97-348, the Coastal Barrier Resources Act of 1982. Volume 14 *in* Report to Congress: Coastal Barrier Resources System. U.S. Department of the Interior, Washington, D.C. 152 pp.
- ²⁹ See endnote 3 in Chapter 5.
- ³⁰ See endnote 16 in Chapter 6.
- ³¹ See endnote 16 in Chapter 6. “Because it was so difficult to make consistent determinations about phased development, phased development was not considered in determining development status after 1982.”
- ³² See endnote 15 in Chapter 4.
- ³³ See endnote 3 in Chapter 5.
- ³⁴ See endnote 8 above.
- ³⁵ See endnote 10 in Chapter 5.
- ³⁶ See endnote 15 in Chapter 4.
- ³⁷ See endnote 15 in Chapter 4.
- ³⁸ See endnote 3 in Chapter 5.
- ³⁹ 16 U.S.C. 3505(a)(1) is an exception for “Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.” Federal expenditures for such projects and activities that meet this exception may be made following consultation with the Service.
- ⁴⁰ See endnote 10 in Chapter 5.
- ⁴¹ See endnote 21 in Chapter 4.
- ⁴² See endnote 8 above.
- ⁴³ See endnote 2 in Chapter 1.
- ⁴⁴ See endnote 19 in Chapter 4.
- ⁴⁵ See endnote 8 in Chapter 6.
- ⁴⁶ See endnote 13 above.
- ⁴⁷ See endnote 14 above.
- ⁴⁸ S. Rept. 101-529

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⁴⁹ H. Rept. 101-657, Part 1. “The committee recognizes the importance of Route 1 in the Florida Keys, particularly since this highway is the only road that provides access to and from the Keys.”

⁵⁰ See endnote 19 in Chapter 6.

⁵¹ See endnote 6 in Chapter 6.

⁵² See endnote 10 above.

⁵³ See endnote 10 above.

⁵⁴ See endnote 21 in Chapter 4.

⁵⁵ See endnote 8 above.

⁵⁶ See endnote 2 in Chapter 1.

⁵⁷ See endnote 19 in Chapter 4.

⁵⁸ See endnote 3 in Chapter 5.

⁵⁹ See endnote 15 in Chapter 4.