

# COASTAL BARRIER RESOURCES ACT

*Acronym: CBRA*

*Citation: 16 U.S.C. §§ 3501-3510 (2002).*

***Legislative Purpose:***

The Coastal Barrier Resources Act seeks to minimize the loss of human life, wasteful expenditure of federal revenues, and damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf Coasts and the Great Lakes.

***Summary:***

The act restricts certain Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, establishes the John H. Chafee Coastal Barrier Resource System, and calls for consideration of the means and measures for long-term conservation of fish, wildlife, and other natural resources.

Under the CBRA, coastal barriers are defined as bay barriers, barrier islands, and other geological features composed of sediment that protect landward aquatic habitats from direct wind and waves. They provide essential habitats for wildlife and marine life, natural storm buffer zones, and areas of scientific, recreational, historic, and archaeological significance.

The CBRA established the John H. Chafee Coastal Barrier Resources System, which consists of undeveloped coastal barriers and other areas located on the U.S. coast specifically designated on a map maintained by the Secretary of Interior. The Secretary is directed to review the maps every 5 years in order to update them to reflect the changes in size or location of any of the barriers.

The CBRA calls for no new federal expenditures within the System relating to the construction or purchase of any structure, road, airport, boat landing facility, bridge or causeway to or on any of the habitats within the System. Funds may be expended for the exploration, extraction, or transportation of energy resources adjacent to coastal waters and for expenditures for the construction of improvements of existing federal navigation channels. Also, expenditures for the maintenance, but not expansion, of any publicly owned or operated road or facility are authorized. Finally, the act provides several exceptions relating to the use by the military and Coast Guard of the barriers in the System.

Every director of a federal agency is ordered to issue a certificate of compliance to the Secretary of Interior. The bill contains an appropriation of \$2,000,000 for every fiscal year up to 2005.

TITLE 16. CONSERVATION

CHAPTER 55. COASTAL BARRIER RESOURCES

16 U.S.C. §§ 3501-3510 (2002).

§ 3501. Congressional statement of findings and purpose

(a) The Congress finds that--

(1) coastal barriers along the Atlantic and Gulf coasts and along the shore areas of the Great Lakes of the United States and the adjacent wetlands, marshes, estuaries, inlets and nearshore waters provide--

(A) habitats for migratory birds and other wildlife; and

(B) habitats which are essential spawning, nursery, nesting, and feeding areas for commercially and recreationally important species of finfish and shellfish, as well as other aquatic organisms such as sea turtles;

(2) coastal barriers contain resources of extraordinary scenic, scientific, recreational, natural, historic, archeological, cultural, and economic importance;[,] which are being irretrievably damaged and lost due to development on, among, and adjacent to, such barriers;

(3) coastal barriers serve as natural storm protective buffers and are generally unsuitable for development because they are vulnerable to hurricane and other storm damage and because natural shoreline recession and the movement of unstable sediments undermine manmade structures;

(4) certain actions and programs of the Federal Government have subsidized and permitted development on coastal barriers and the result has been the loss of barrier resources, threats to human life, health, and property, and the expenditure of millions of tax dollars each year; and

(5) a program of coordinated action by Federal, State, and local governments is critical to the more appropriate use and conservation of coastal barriers.

(b) The Congress declares that it is the purpose of this Act to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts and along the shore areas of the Great Lakes by restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, by establishing the John H. Chafee Coastal Barrier Resources System, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

§ 3502. Definitions

For purposes of this Act--

(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.

(2) The term "Committees" means the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(3) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than--

(A) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(B) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(C) assistance for environmental studies, planning, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(D) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age survivors or disability insurance program.

Such term includes flood insurance described in section 1321 of the National Flood Insurance Act of 1968, as amended (*42 U.S.C. 4028*).

(4) The term "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron, Lake St. Clair, Lake Michigan, and Lake Superior, to the extent that those lakes are subject to the jurisdiction of the United States.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The term "System" means the John H. Chafee Coastal Barrier Resources System established by section 4(a) [*16 USC § 3503(a)*].

(7) The term "System unit" means any undeveloped coastal barrier, or combination of closely-related undeveloped coastal barriers, included within the John H. Chafee Coastal Barrier Resources System established by section 4 [*16 USC § 3503*].

#### § 3503. Establishment of John H. Chafee Coastal Barrier Resources System

(a) Establishment. There is established the John H. Chafee Coastal Barrier Resources System, which shall consist of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary entitled "Coastal Barrier Resources System", dated October 24, 1990, as those maps may be modified, revised, or corrected under--

(1) subsection (f)(3);

(2) section 4 of the Coastal Barrier Improvement Act of 1990 (*16 U.S.C. 3503* note; Public Law 101-591); or

(3) any other provision of law enacted on or after November 16, 1990, that specifically authorizes the modification, revision, or correction.

(b) System maps. The Secretary shall keep the maps referred to in subsection (a) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, and in such other offices of that service as the Director considers appropriate.

(c) Boundary review and modification. At least once every 5 years, the Secretary shall review the maps referred to in subsection (a) and shall make, in consultation with the appropriate State, local, and Federal officials, such minor and technical modifications to the boundaries of System units as are necessary solely to reflect changes that have occurred in the size or location of any System unit as a result of natural forces.

(d) Additions to System. The Secretary may add a parcel of real property to the System, if--

- (1) the owner of the parcel requests, in writing, that the Secretary add the parcel to the System; and
- (2) the parcel is an undeveloped coastal barrier.

(e) Addition of excess Federal property.

(1) Consultation and determination. Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (*40 U.S.C. 471 et seq.*) that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than 180 days after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall--

- (A) prepare a map depicting the undeveloped coastal barrier portion of such property; and
- (B) publish in the Federal Register notice of the addition of such property to the System.

(2) Effective date of inclusion. An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under paragraph(1)(B) with respect to that area.

(f) Maps. The Secretary shall--

(1) keep a map showing the location of each boundary modification made under subsection (c) and of each parcel of real property added to the System under subsection (d) or (e) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service and in such other offices of the Service as the Director considers appropriate;

(2) provide a copy of the map to--

- (A) the State and unit of local government in which the property is located;
- (B) the Committees; and
- (C) the Federal Emergency Management Agency; and

(3) revise the maps referred to in subsection (a) to reflect each boundary modification under subsection (c) and each addition of real property to the System under subsection (d) or (e), after publishing in the Federal Register a notice of any such proposed revision.

(g) Guidelines for certain recommendations and determinations.

(1) In general. In making any recommendation to the Congress regarding the addition of any area to the System or in determining whether, at the time of the inclusion of a System unit within the System, a coastal barrier is undeveloped, the Secretary shall consider whether within the area--

- (A) the density of development is less than 1 structure per 5 acres of land above mean high tide; and
- (B) there is existing infrastructure consisting of--
  - (i) a road, with a reinforced road bed, to each lot or building site in the area;
  - (ii) a wastewater disposal system sufficient to serve each lot or building site in the area;

- (iii) electric service for each lot or building site in the area; and
- (iv) a fresh water supply for each lot or building site in the area.

(2) Structure defined. In paragraph (1), the term "structure" means 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.

(3) Savings clause. Nothing in this subsection supersedes the official maps referred to in subsection (a).

#### § 3504. Limitations on Federal expenditures affecting the System

(a) Construction or purchase of structure, facility, road, airport, etc.; projects to prevent erosion; exceptions. Except as provided in section 6 [16 USC § 3505], no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the System, including, but not limited to--

(1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure;

(2) the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(3) the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 [16 USC § 3503] on maps numbered S01 through S08 and LA07 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

(b) New expenditures or new financial assistance. An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if--

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date.

#### § 3505. Exceptions to limitations on expenditures

(a) In general. Notwithstanding section 5 [16 USC § 3504], the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available within the System for the following:

(1) 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.

(2) 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.

(3) 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.

(4) Military activities essential to national security.

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto.

(6) Any of the following actions or projects, if a particular expenditure or the making available of particular assistance for the action or project is consistent with the purposes of this Act:

(A) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) Establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (*16 U.S.C. 4601-4* through 11) and the Coastal Zone Management Act of 1972 (*16 U.S.C. 1451* et seq.).

(D) Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act [*42 USC § § 5170a, 5170b, 5192*] and section 1362 of the National Flood Insurance Act of 1968 (*42 U.S.C. 4103*) and are limited to actions that are necessary to alleviate the emergency.

(F) 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.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

(b) Existing Federal navigation channels. For purposes of subsection (a)(2), 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 System.

(c) Expansion of highways in Michigan. The limitations on the use of Federal expenditures or financial assistance within the System under subsection (a)(3) shall not apply to a highway--

(1) located in a unit of the System in Michigan; and

(2) in existence on the date of the enactment of the Coastal Barrier Improvement Act of 1990 [enacted Nov. 16, 1990].

(d) Services and facilities outside System.

(1) In general. Except as provided in paragraphs (2) and (3) of this subsection, limitations on the use of Federal expenditures or financial assistance within the System under section 5 [*16 USC § 3504*] shall not

apply to expenditures or assistance provided for services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System (as depicted on the maps referred to in section 4(a) [16 USC § 3503(a)]) which relate to an activity within that unit.

(2) Prohibition of flood insurance coverage. No new flood insurance coverage may be provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) for any new construction or substantial improvements relating to services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

(3) Prohibition of HUD assistance.

(A) In general. No financial assistance for acquisition, construction, or improvement purposes may be provided under any program administered by the Secretary of Housing and Urban Development for any services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

(B) Definition of financial assistance. For purposes of this paragraph, the term "financial assistance" includes any contract, loan, grant, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

§ 3506. Certification of compliance.

(a) Regulations. Not later than 12 months after the date of enactment of the Coastal Barrier Improvement Act of 1990 [enacted Nov. 16, 1990], the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

(b) Certification. The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary.

§ 3507. Priority of laws

Nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State, so that the two cannot be reconciled or consistently stand together. This Act shall in no way be interpreted to interfere with a State's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

§ 3508. Separability of provisions

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

§ 3510. Authorization of appropriations.

There is authorized to be appropriated to the Secretary to carry out this Act \$ 2,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.