

The Honorable David Bernhardt  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C St, NW  
Washington, DC 20240

July 8, 2020

Dear Secretary Bernhardt:

We are former committee staff to Republican and Democrat Members of Congress who helped draft the Coastal Barrier Resources Act of 1982 (CBRA) and the Coastal Barrier Improvement Act of 1990 (CBIA). We worked closely with Members of Congress who were crucial to the formation and passage of the CBRA and CBIA, including Sens. John Chafee (R-RI) and George Mitchell (D-ME), and Reps. Thomas B. Evans, Jr. (R-DE), John Breaux (D-LA), and Gerry Studds (D-MA). We served as minority and majority subcommittee and committee staff of the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works. We are writing to express our strong opposition to the Department's recent decision to open the John H. Chafee Coastal Barrier Resources System (System) to sand mining to generate sand for beach renourishment of areas outside of the System. This decision runs directly counter to the language and intent of the CBRA and CBIA and should be revoked.

The bipartisan Members of Congress who championed the CBRA and CBIA, and we, the professional staff who helped draft the legislation, sought to specifically protect coastal resources from damaging activities, while saving federal tax dollars and discouraging hazard-prone development that places people and property at risk. In his House floor statement urging enactment of the CBRA in October 1982, Rep. Evans said that, "this legislation will contribute to the protection of valuable natural resources . . . [and] make a significant contribution to the saving of Federal dollars . . ." <sup>1</sup> Sen. Chafee noted that the CBRA, "preserves valuable natural resources; and it promotes fiscal responsibility by avoiding Federal subsidies and insurance of inherently risky developments." <sup>2</sup> Rep. Studds observed that, "For decades, the federal government worked against itself, spending millions to acquire and protect some undeveloped coastal barriers and billions to subsidize development on other barriers. The CBRA was intended to stop all that . . ." <sup>3</sup> Secretary of the Interior James Watt noted the many ecological benefits of protecting coastal barriers, saying "coastal barriers are excellent habitat for fish and wildlife . . ." <sup>4</sup> President Ronald Reagan himself expressed similar sentiments when he signed the CBRA into law, saying that it represents, "a major step forward in the conservation of our

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<sup>1</sup> Floor statement by former U.S. Representative Thomas B. Evans, Jr., (R-DE). October 1982.

<sup>2</sup> Chafee, Senator John H., "Statement by Senator John H. Chafee, Committee of Environment and Public Works, Hearing on S. 2470, a bill relating to Unit FL-35 of the Coastal Barrier Resources System." September 22, 1998.

<sup>3</sup> Studds, Representative Gerry, "Statement by Representative Gerry Studds, Coastal Barrier Resources System: Hearing Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, and on Oceanography, of the House Committee on Merchant Marine and Fisheries." 101<sup>st</sup> Congress, 1<sup>st</sup> Session. 1989.

<sup>4</sup> Watt, James, Secretary of the Interior, "Letter to the Hon. Walter B. Jones, Chairman, Committee on Merchant Marine and Fisheries, House of Representatives." February 2, 1982.

magnificent coastal resources . . . and will enhance both wise natural resource conservation and fiscal responsibility.”<sup>5</sup>

The CBRA protects valuable coastal resources by shielding them from most Federal expenditures that support coastal development. In 1994, the Assistant Solicitor for Fish and Wildlife addressed a request by the Army Corps of Engineers to dredge nearly a million cubic yards of sand from a System Unit to renourish a nearby developed beach outside of the System.<sup>6</sup> The Assistant Solicitor pointed to the clear language of CBRA Section 6(a), which articulates a limited number of exceptions to the ban on Federal expenditures within the System (16 U.S.C. 3505(a).) Specifically, he noted that Section 6(a) specifies that Federal expenditures or financial assistance can only be made available for a subset of listed activities that occur *within* the Coastal Barrier Resources System. He noted that “beach renourishment projects must be aimed at renourishing the beach of a CBRA Unit in order to qualify for Federal funding under Section 6(a)(6).” Furthermore, he noted that an essential purpose of CBRA is to minimize damage to fish, wildlife, and other natural resources, and that sand dredging can damage productive natural systems in several ways, including the outright destruction of all benthic organisms, conversion of ecologically rich shallow water habitat to deeper, less productive open water, and erosion of adjacent shallow areas and reduction of their habitat values. He therefore recognized that Section 6(a)(6)(G) does not allow federal expenditures for dredging CBRA units for sand to be used outside of the System, and the Department of Interior has stood by this plain text reading of the statute for the past 25 years, including under this Administration as recently as December 2018.<sup>7</sup>

The Department’s sudden decision to overturn 25 years of straightforward adherence to the statute came with no opportunity for public review or comment. The decision was made in response to a letter from three Congressmen on October 25, 2019,<sup>8</sup> which triggered a response from the Associate Solicitor on October 30,<sup>9</sup> followed by your announcement on November 4,<sup>10</sup> a timeframe of six working days. Allowing System Units to be mined for sand to feed beach renourishment requests up and down the coasts is not simply contrary to the statute’s text: it will result in the inevitable loss of critically important habitat that commercially important fisheries and shellfisheries depend on, as well as numerous threatened and endangered species and wildlife of all kinds.

CBRA was established with the explicit purpose of protecting ecologically rich coastal habitat from federally-funded activities that lead to the loss and degradation of that habitat. Yet, the recent Department decision to open the door to *federally funded* commercial sand mining operations in System Units flies in the face of CBRA’s fundamental objectives to save federal

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<sup>5</sup> Reagan, President Ronald, “Statement on Signing the Coastal Barrier Resources Act.” October 18, 1982.

<sup>6</sup> Raynor, Charles P., Assistant Solicitor, Fish and Wildlife, Memo to Ralph Morgenweck, Assistant Director, Fish and Wildlife Enhancement, Fish and Wildlife Service. 1994.

<sup>7</sup> Everson, Margaret, Principal Deputy Director, U.S. Fish and Wildlife Service, letter to The Honorable Garret Graves, U.S. House of Representatives. December 21, 2018.

<sup>8</sup> Van Drew, Jeff, Rouzer, David, Graves, Garrett, U.S. Representatives, letter to The Honorable David Bernhardt, Secretary, U.S. Department of Interior. October 25, 2019.

<sup>9</sup> Romanik, Peg, Associate Solicitor, Division of Parks and Wildlife, letter to Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service. October 30, 2019.

<sup>10</sup> Bernhardt, David, Secretary of the Interior, letter to Reps. Van Drew, Rouzer and Graves. November 4, 2019.

tax dollars, save human lives, and protect the coastal environment. The Army Corps of Engineers has admitted that sand mining practices “have taken a toll on coastal birds,” and that places like inlets – that could be mined under the new policy – “are some of the most important habitats for shorebirds.”<sup>11</sup> Scientists at the Virginia Institute of Marine Science have analyzed the impact from shallow sand mining of even a few centimeters in depth, and have found a “profound effect on the resident infauna and lesser, but none-the-less real, consequences on the local pelagic organisms and physical processes.”<sup>12</sup> The Corps scientists have also found “detrimental impacts” from sand mining, including “chronic downdrift beach erosion” that could reduce the storm resiliency benefits provided by System Units, placing nearby communities at increased risk from impacts from storms, hurricanes, and sea level rise.<sup>13</sup>

The Department’s sudden deviation from the CBRA’s plain text upends the statute’s stated objectives. It allows federal funds to be used for activities that harm ecologically important coastal resources in order to support coastal development that itself places people and property at risk. This is exactly opposite to what the CBRA commands and was established to accomplish. We urge you to revoke this harmful and unsupported, atextual application of the CBRA and once more adhere to the statute’s plain language and purpose.

Sincerely,

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Chief of Staff, Sen. John Chafee  
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<sup>11</sup> Harrington, B.R.. *Coastal inlets as strategic habitat for shorebirds in the southeastern United States*. DOER Technical Notes Collection. ERDC TN-DOER-E25. Vicksburg, MS: U.S. Army Engineer Research and Development Center. 2008.

<sup>12</sup> Hobbs, C.H. *An Investigation of Potential Consequences of Marine Mining in Shallow Water: An Example from the Mid-Atlantic Coast of the United States*. Virginia Institute of Marine Sciences. Published in the *Journal of Coastal Research*. Winter 20002.

<sup>13</sup> Dabees, Mohamed and Kraus, Nicholos, “General Methodology for Inlet Reservoir Model Analysis of Sand Management Near Tidal Inlets.” Humiston & Moore Engineers, Naples, FL, and U.S. Army Engineer Research and Development Center, Vicksburg, MS. In *Proceedings of Coastal Dynamics*. 2005.

U.S. House of Representatives/Rep. John Breaux

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