

PART 2, CHAPTER 15

COASTAL BARRIER RESOURCES

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PART 2, CHAPTER 15

COASTAL BARRIER RESOURCES

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, the Florida Department of Transportation (FDOT) has assumed Federal Highway Administration's (FHWA's) responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS. In general, FDOT's assumption includes all highway projects in Florida whose source of federal funding comes from FHWA or which constitute a federal action through FHWA. This includes responsibilities for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

15.1 OVERVIEW

This chapter contains the procedures to determine whether a FDOT project is subject to the provisions of the **Coastal Barrier Resources Act of 1982 (CBRA)** and the **Coastal Barrier Improvement Act (CBIA) of 1990**, collectively "the Acts", found at **16 U.S.C. §§ 3501-3510**. The chapter also details the coordination, consultation and documentation required to ensure compliance with the Acts. This chapter is only applicable to federally funded projects.

In 1982, the **CBRA** was signed into law (**Pub. L. 97-348**), prohibiting federal expenditures for the development of designated undeveloped coastal barriers and their associated aquatic habitat, including wetlands, estuaries, and inlets. The **CBRA** and **CBIA** required the U.S. Department of the Interior (USDOI) to establish the Coastal Barrier Resource System (CBRS) creating designated "units" or areas that fall under this protection. However, the **CBRA** contains exceptions, described in [Section 15.1.2.1](#), to allow the use of federal funds on certain projects.

Three goals of the **CBRA** are to:

1. Minimize loss of human life;
2. Reduce wasteful expenditure of federal resources; and
3. Protect the natural resources associated with coastal barriers.

The **CBRA** accomplishes these goals by restricting federal expenditures and financial assistances which have the effect of encouraging development of coastal barriers, by establishing the coastal barrier resource 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.

15.1.1 Types of Coastal Barrier Resources

The **CBRA** defines an “undeveloped coastal barrier” as:

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that–

- (i) consists of unconsolidated sedimentary materials,
- (ii) is subject to wave, tidal, and wind energies, 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.

Types of coastal barriers include:

1. **Bay barriers** – Coastal barriers that connect two headlands, and enclose a pond, marsh, or other aquatic habitat.
2. **Tombolos** – Sand or gravel beaches that connect offshore islands to each other or to a mainland.
3. **Barrier spits** – Coastal barriers that extend into open water and are attached to the mainland at only one end.
4. **Barrier islands** – Coastal barriers completely detached from the mainland.

The **CBIA** amended the **CBRA** by adding units to the CBRS and establishing a category identified as Otherwise Protected Areas (OPAs). OPAs are undeveloped coastal barriers within the boundaries of lands reserved as wildlife refuges, parks, or areas for other conservation purposes. New construction within OPAs cannot receive federal flood insurance unless it conforms to the purposes for which the area is protected. No other restrictions are placed on federal expenditures in these areas.

In Florida, CBRS units (i.e. specific coastal barriers) have been designated along the Atlantic and Gulf Coasts. The U.S. Fish and Wildlife Service (USFWS) issues maps identifying the boundaries of CBRS units and OPAs. These maps can be found on the USFWS website (see [Section 15.3](#) for website).

15.1.2 Federal Funding Prohibitions

The **CBRA** restricts most federal or financial assistance for development within the boundaries of designated coastal barrier units, except for OPAs identified on maps of the System. The **CBRA** defines financial assistance as "any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect

federal assistance." **Section 5** of the **CBRA (16 U.S.C. § 3504)** provides that no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the CBRS, including, but not limited to:

1. Construction or purchase of any structure, appurtenance, facility, or related infrastructure;
2. Construction or purchase of any road, airport, boat landing facility, or other facility within a CBRS unit;
3. Construction of a bridge or causeway leading to any CBRS unit; and
4. Assistance for erosion control or stabilization of any inlet, shoreline, or inshore area, except in certain emergencies.

15.1.2.1 Exceptions to Federal Funding Prohibitions

Exceptions to the prohibition on financial assistance are provided in **Section 6** of the **CBRA (16 U.S.C. § 3505)**. Listed below are summaries of the exceptions that may be applicable to FDOT:

1. Maintenance, replacement, reconstruction, or repair, but not the expansion (except for U.S. Highway 1 in the Florida Keys) of publicly owned or publicly operated roads, structures, or facilities that are essential links to a larger network or system (FHWA has determined that all highways on the federal network are essential links in a larger network or system);
2. Construction, operation, maintenance, and rehabilitation of U.S. Coast Guard (USCG) facilities and access to them;
3. Maintenance or construction of improvements to existing federal navigation channels and related structures, including disposal of dredge materials;
4. Expenditures related to conservation, navigation, recreation, scientific research, disaster relief, roads, and shoreline stabilization, providing that the expenditures are consistent with the purpose of **CBRA** (see **16 U.S.C. § 3505(a)(6)(A) – (G)** for specific details);
5. Federal expenditure or financial assistance that was provided by Congressional appropriation prior to October 18, 1982.

15.1.3 Consultation Overview

For projects which may qualify for exception under **Section 6** of **CBRA**, the consultation requirements described in the Advisory Guidelines contained in the **48 Federal Register (FR) 45664, 10/06/1983**, must be satisfied. Under these guidelines, the USFWS must be consulted with and allowed to comment on the proposed action prior to commitment of federal funds. The USFWS will provide comments and

determine if the federal action is consistent with the **CBRA**. Consultation with USFWS is not required in areas identified as OPAs.

Projects which are not eligible for federal funding under **Section 5** of the **CBRA** are either removed from FDOT's Work Program or assigned for state or local funds. This determination occurs during the Planning phase (see [Section 15.2](#)).

For other projects that are within, or in the vicinity of a coastal barrier resource, the consultation process is completed during the project development phase as described in this chapter. The consultation process is shown in [Figure 15-1](#).

15.2 PROCEDURE

The following procedures apply to Type 2 Categorical Exclusions (Type 2 CEs), Environmental Assessments (EAs), and Environmental Impact Statements (EISs), ([Part 1, Chapter 2, Class of Action Determination for Highway Projects](#)).

Since funding for a project can be rescinded by Lead Federal Agencies, it is necessary to determine, as early as possible, whether a project is located within, or in the vicinity of, a coastal barrier resource designated under the **CBRA**. This determination should be made during the Planning and/or Programming Screens of the Efficient Transportation Decision Making (ETDM) process ([ETDM Manual, Topic No.650-000-001](#)) and should be discussed during any Statewide Acceleration Transformation (SWAT) team meetings where the Acts may apply.

15.2.1 Determining if Provisions of Coastal Barrier Resources Act Apply

The first step is for the District to determine if a project is subject to provisions of the **CBRA**. During the development of the Preliminary Environmental Document (PED), the District should review the CBRS unit maps and include its initial evaluation of coastal barrier involvement for the project ([Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification](#)) and review the results of the Geographical Information System (GIS) analysis for the **CBRA** data layer. The unit type on **CBRA** data layer's metadata should identify whether the area is an OPA or CBRS unit. During the screening events, the Environmental Technical Advisory Team (ETAT) will review the PED and available GIS layers in the Environmental Screening Tool (EST). At the end of the Programming Screen, the District should review the information published in the **Programming Screen Summary Report** with attention to any ETAT comments and degree of effect determinations for the Coastal and Marine issue. Comments by USFWS are especially important. If a proposed project is in the vicinity of or leads directly to a designated coastal barrier resource unit that is not otherwise identified as an OPA, then consultation is required with the USFWS.

If the District determines that the project is neither in the vicinity of nor leads directly to a designated coastal barrier resource unit, then no additional documentation is required other than a statement to the project file indicating that the coastal barrier

resource data layer or maps were reviewed and no resources were identified within the project area.

For Type 2 CEs with no CBRS involvement, mark the box “NoInv” in **Section 3.C.7** on the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11**.

For EAs and EISs along coastal areas where the provisions of the **CBRA** could apply but the appropriate review has taken place and it has been determined that there is no CBRS involvement, add the following or similar statement to the Environmental Analysis section accordingly:

It has been determined that this project is neither in the vicinity of, nor leads directly to a designated coastal barrier resource unit pursuant to the **Coastal Barrier Resources Act of 1982 (CBRA)** and the **Coastal Barrier Improvement Act of 1990 (CBIA)**.

For EAs and EISs that are not along coastal areas, the Environmental Document does not require a statement in this regard.

If the District determines that the project is in the vicinity of, or leads directly to a designated coastal barrier resource unit then the USFWS must be consulted as required in [Section 15.2.2](#). Documentation of this coordination is included in the Environmental Document according to [Section 15.2.3](#). Consultation with USFWS is not required for projects designated as OPA units.

15.2.2 Consultation Requirements

The District is responsible for preparing the following:

1. A transmittal letter, which includes the following statement:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. §327 and a Memorandum of Understanding dated December 14, 2016 and executed by FHWA and FDOT.

2. A description of the proposed action.
3. A map showing the project location, the **CBRA** unit(s), and a reference to the appropriate CBRS unit map (see link under [Section 15.3](#)).

This information is sent to the local field office of the USFWS with a copy to the District’s USFWS ETAT representative. See [Figure 15-2](#) to determine the appropriate field office and mailing address.

The subject line of the transmittal letter should contain the project’s ETDM Number, Financial Management Number, and Federal-Aid Project Number (if available). A statement should be made to the effect that:

This project information package is being provided to you to initiate consultation in compliance with the **Coastal Barrier Resources Act (CBRA)**. The subject project and its relationship to a federally-designated coastal barrier resource is described in this package.

Please review the attached information and provide the District Environmental Engineer/Manager a written opinion regarding whether the project meets the exception under **Section 6** of **CBRA** within thirty (30) calendar days.

15.2.3 Documentation in Environmental Document

Documentation in Type 2 CEs, EAs, and EISs is necessary if the project is subject to the consultation requirements of the **CBRA**.

For Type 2 CEs – The consultation process and final determination should be briefly summarized and included in the Type 2 CE documentation. Mark the box “No” in **Section 3.C.7** on the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11** as appropriate based on the outcome of the consultation. The correspondence and other documents developed during the consultation process should be contained in the project file and referenced in Type 2 CE documentation.

For an EA – The consultation process and final determination should be summarized in the Coastal Barrier Resources section of the Environmental Analysis section of the EA. The correspondence and other documents developed during the consultation process should be referenced in the EA and contained in the Appendix of the EA.

For an EIS – The consultation process and final determination should be summarized in the Coastal Barrier Resources section of the Environmental Analysis section of the EIS. The correspondence and other documents developed during the consultation process should be referenced in the EIS and contained in the Appendix of the EIS.

15.3 REFERENCES

Coastal Barrier Improvement Act of 1990

Coastal Barrier Resources Act of 1982

Coastal Barrier Resources Reauthorization Act of 2000

Coastal Barrier Resources Reauthorization Act of 2005

FR, 1982. Coastal Barrier Resources Act; Delineation Criteria. FR Vol. 47, No. 158

FR, 45664, 08/06/1983

Memorandum of Understanding Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program

Pursuant to 23 U.S.C. 327, December 14, 2016.

<http://www.fdot.gov/environment/pubs/Executed-FDOT-NEPA-Assignment-MOU-2016-1214.pdf>

Public Law 97-348 – October 18, 1982

USFWS website link to CBRS unit maps: <http://www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html>

15.4 FORMS

Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11*

*To be completed in [SWEPT](#)

Note: Hyperlinks are only for those with FDOT Intranet access only. Those without Intranet access may view or download forms at: <http://www.fdot.gov/procedures/>. Sign in is required.

15.5 HISTORY

08/18/2000, 02/01/2011, 07/15/2016

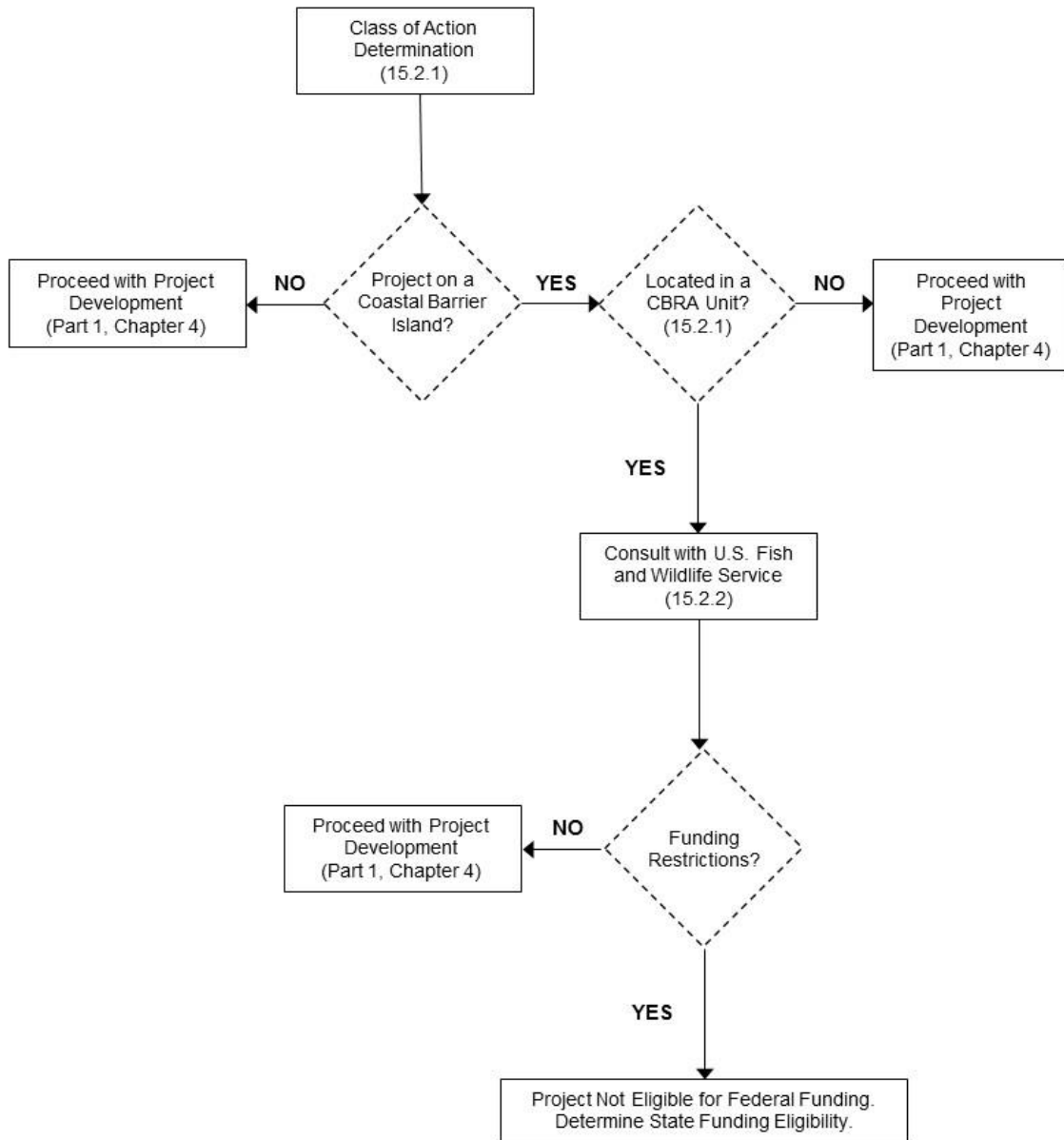


Figure 15-1 Coastal Barrier Resources Act Consultation Process United States Fish and Wildlife Service

Vero Beach

[FDOT Districts 1, 4, 5, 6 (Osceola Co. only)]

CBRA Consultation
South Florida Ecological Services Field Office
1339 20th Street
Vero Beach, FL 32960
Phone: (772) 562-3909
Fax: (772) 562-4288
<http://www.fws.gov/verobeach/>

Panama City

(FDOT District 3)

CBRA Consultation
Panama City Ecological Services Field Office
1601 Balboa Avenue
Panama City, FL 32405
Phone: (850) 769-0552 x232
Fax: (850) 763-2177
<http://www.fws.gov/panamacity/>

Jacksonville

[FDOT Districts 1, 2, 5, 7 (Manatee Co. only)]

CBRA Consultation
North Florida Ecological Services Field Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7517
Phone: (904) 731-3336
Fax: (904) 731-3045
<http://www.fws.gov/northflorida/>

Figure 15-2 United States Fish and Wildlife Service Contacts