

## **PART 2, CHAPTER 15**

# **COASTAL BARRIER RESOURCES**

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## PART 2, CHAPTER 15

# COASTAL BARRIER RESOURCES

### 15.1 OVERVIEW

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, the Florida Department of Transportation (FDOT) has assumed and Federal Highway Administration (FHWA) has assigned its 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 (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility 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).

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)** which was later amended by 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**), to preserve the ecological integrity of areas that serve to buffer the U.S. mainland from storms and provide important habitats for fish and wildlife by 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. Maps showing the unit locations can be found on the U.S. Fish and Wildlife Service (USFWS) website (see [Section 15.3](#) for website). The **CBRA** also 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 by discouraging development in high risk areas;
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 CBRS, 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

(iii) 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.

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 conservation lands, such as those 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 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 Limitations on Federal Expenditures

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 on, or bridge or causeway to a CBRS unit;
3. Assistance for erosion control or stabilization of any inlet, shoreline, or inshore area, except in certain emergencies.

### 15.1.2.1 Exceptions to Limitations on Federal Expenditures

Exceptions to the prohibition on financial assistance are provided in **Section 6** of the **CBRA (16 U.S.C. § 3505)**.

A federal expenditure is allowable within CBRS units if it meets the exceptions in **16 U.S.C. § 3505(a)(1)-(5)**. Those applicable to FDOT include:

- Maintenance or construction of improvements to existing federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including disposal of dredge materials related to such maintenance or construction.
- 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.
- Construction, operation, maintenance, and rehabilitation of U.S. Coast Guard (USCG) facilities and access to them.

A federal expenditure is allowable within CBRS units if it meets the exceptions in **16 U.S.C. § 3505(a)(6)(A)-(G)** and is also consistent with the three goals of the **CBRA**. Those applicable to FDOT include:

- 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.

- Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- 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; (All highways on the federal network are essential links in a larger network or system).
- Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

### 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 Federal 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.650-000-002](#)).

## 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](#)). The results of the Geographical Information System (GIS) analysis for the **CBRA** data layer should be reviewed and discussed in the PED. The unit type on **CBRA** data layer's metadata should identify whether the area is an OPA or CBRS unit. OPAs are denoted on the unit number with a **P** after the CBRS number (e.g., FL-03P, P31P). 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 indicating that the coastal barrier resource data layer or maps were reviewed and no resources were identified within the project area.

For projects along coastal areas where the provisions of the **CBRA** could apply but following the appropriate review it has been determined that there is no CBRS involvement, add the following or similar statement to the Coastal Barrier Resources section of the Environmental Document:

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 projects that are not along coastal areas, the Environmental Document does not require this statement.

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 the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.*

2. A description of the proposed action.
3. A map showing the project location, the CBRS 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.

The USFWS has developed a **Template for Interagency CBRA Consultation** to facilitate this process.

## 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 in the **Type 2 Categorical Exclusion Determination Form** as appropriate based on the outcome of the consultation. Include any letters from the USFWS concerning Coastal Barrier Resources as an attachment, if applicable. The

correspondence and other documents developed during the consultation process should be contained in the project file in SWEPT and referenced in the **Type 2 Categorical Exclusion Determination Form**. It is recommended that these documents be placed within the Coastal Barrier Resources folder within SWEPT.

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

### 15.2.4 Emergency Consultation

In cases where emergency repairs may affect Coastal Barrier Resources, consultation with the USFWS is not required where an emergency threatens life, land, and property immediately adjacent to a CBRS unit **[16 U.S.C. 3504(a)(3)]**. In this case an email notification of the activity occurring under this exemption may be emailed to [cbra@fws.gov](mailto:cbra@fws.gov). Related emergency action correspondence is discussed in the Environmental Document and uploaded into the SWEPT project file. Permanent repairs must follow the appropriate consultation for the **CBRA** outlined in [Section 15.2](#).

## 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

First Renewal of the 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, May 26, 2022.

[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/nepa\\_assign/fdot-327-first-renewal-mou-for-comment.pdf?sfvrsn=202c70b4\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/nepa_assign/fdot-327-first-renewal-mou-for-comment.pdf?sfvrsn=202c70b4_2)

Public Law 97-348 – October 18, 1982

Title 16 U.S.C. §§ 3501-3510, Coastal Barrier Resources.

<https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter55&edition=prelim>



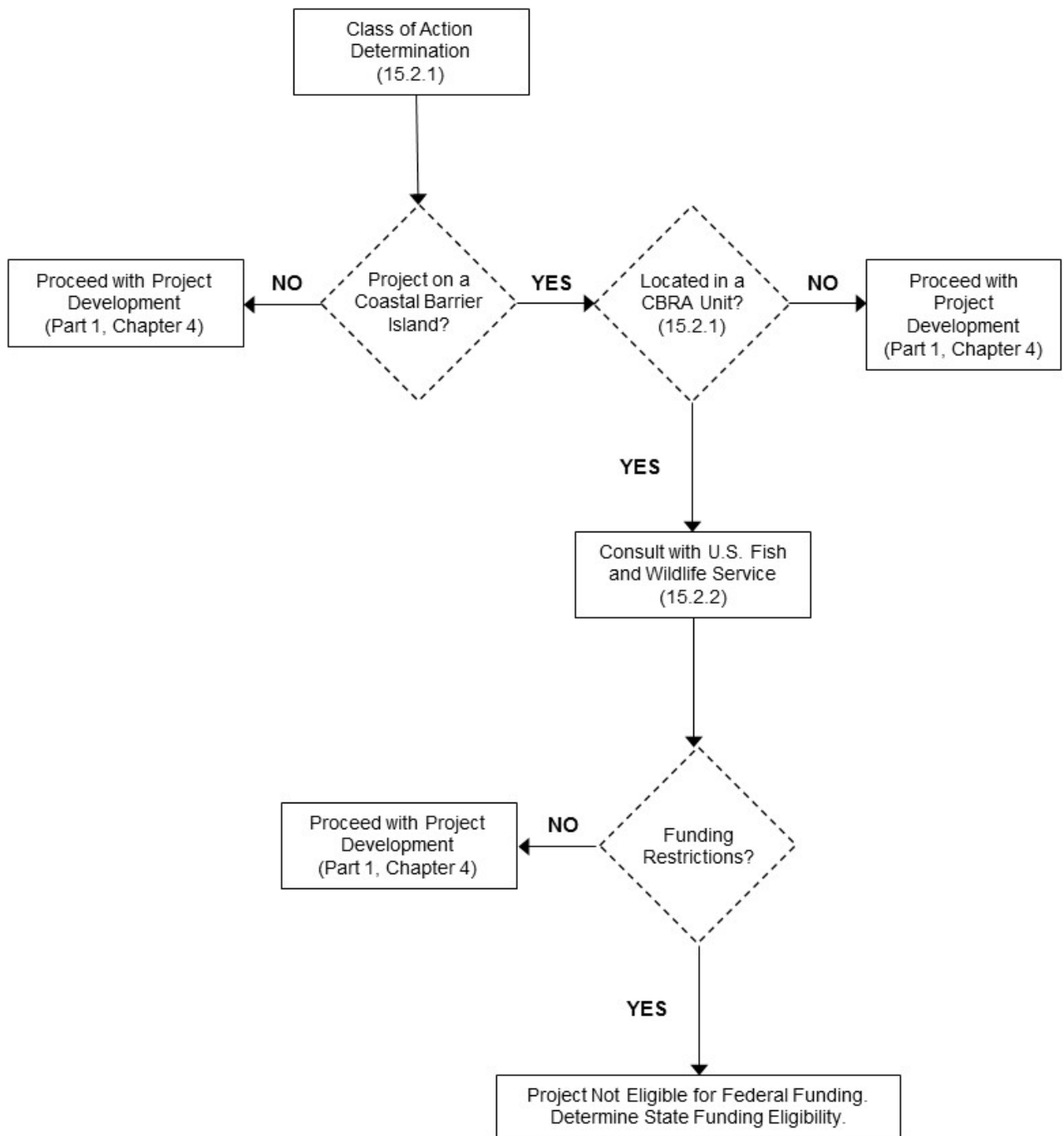
USFWS website link to CBRS unit maps.

<https://www.fws.gov/library/collections/coastal-barrier-resources-system-maps-florida>

USFWS website link to CBRA consultation (including the Template for Interagency CBRA Consultation). <https://www.fws.gov/service/coastal-barrier-resources-act-project-consultation>

## **15.4 HISTORY**

8/18/2000, 2/1/2011, 7/15/2016, 7/14/2017: NEPA Assignment and re-numbered from Part 2, Chapter 26, 1/14/2019, 7/1/2020, 7/1/2023



**Figure 15-1 Coastal Barrier Resources Act Consultation Process**

### **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

<https://www.fws.gov/office/florida-ecological-services/visit-us/locations/vero-beach-branch-office>

### **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

<https://www.fws.gov/office/florida-ecological-services/visit-us/locations/panama-city-branch-office>

### **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

<https://www.fws.gov/office/florida-ecological-services/visit-us/locations/jacksonville-branch-office>

**Figure 15-2 United States Fish and Wildlife Service Contacts**