

Summary of Public Comments Received on Draft Maps for John H. Chafee Coastal Barrier Resources System Units P30/P30P and P31/P31P, and U.S. Fish and Wildlife Service Responses and Recommendations

I. Overview

The U.S. Fish and Wildlife Service (Service) prepared five draft revised maps dated May 16, 2016, for four Coastal Barrier Resources System (CBRS) units in Gulf and Bay Counties, Florida – Cape San Blas Unit P30/P30P and St. Andrew Complex P31/P31P. The Service held a 45-day public comment period on the draft maps from July 7 through August 22, 2016. The draft maps were prepared in accordance with the Coastal Barrier Resources Reauthorization Act of 2006 (Pub. L. 109-226) which directs the Service to prepare draft revised maps for all CBRS areas, propose additions to the CBRS, and solicit public comments on the draft revised maps.

The Service announced the availability of the draft maps and the opportunity to provide comments in a notice published in the *Federal Register* on July 7, 2016 (81 FR 44320). The Service sent letters dated July 12, 2016, to approximately 50 stakeholders, including members of Congress; Federal, state, and local officials; and nongovernmental organizations. The draft maps, *Federal Register* notice, and summaries of the proposed boundary changes were made available on the Service's website during the public comment period.

The Service received comments from the following entities regarding the proposed changes to Unit P30:

- Florida Wildlife Federation (generally supports proposed changes)
- One interested party (supports proposed changes)
- Three property owners (oppose proposed changes)

In general, the property owners who commented on Unit P30 were

primarily opposed to the proposed changes to this unit because more areas were not proposed for removal from the CBRS.

The Service received no comments specific to Unit P30P.

The Service received the following comments regarding the proposed changes to Unit P31P:

- Finisterre and Martinique Homeowners Associations, Inc. (supports proposed changes)
- Florida Wildlife Federation (generally supports proposed changes)
- Congresswoman Gwen Graham (supports proposed changes)
- 38 interested parties and property owners (support proposed changes)
- One property owner (opposes proposed changes)

Nearly all of the commenters supported the proposed changes to Unit P31P (primarily due to the proposed removals from Unit P31P); however, one property owner opposed the reclassification of a small undeveloped island from Otherwise Protected Area (OPA) Unit P31P to System Unit P31.

The Service received no comments specific to Unit P31.

Copies of the comments submitted to the Service during the public comment period are available on the Federal e-Rulemaking Portal at <http://www.regulations.gov>. In the Search box, enter FWS-HQ-ES-2016-0069, which is the docket number for the public review notice.

II. Summary of Public Comments and Service Responses

The comments received during the public comment period and the Service's responses to these comments are summarized below.

Support for Proposed Removals from Unit P31P

Comment: Most commenters supported the proposed removals from Unit P31P and many expressed their desire for the proposed changes to become effective.

Service Response: The proposed removals will only take effect if the revised maps are adopted through legislation enacted by Congress.

Concerns Regarding Proposed Removals of Qualifying Areas from an OPA

Comment: The Florida Wildlife Federation generally supports the proposed changes to Units P30/P30P and P31/P31P. However, the Federation commented that they are concerned that the three subdivisions proposed for removal from Unit P31P in Bay County technically meet the criteria to be included within the CBRS. The Federation supports the Service's clarification in the *John H. Chafee Coastal Barrier Resources System Unit P31P, St. Andrew, Florida Summary of Proposed Changes* dated May 2016, (which is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/draft-maps.html>) regarding the protocol for similar situations in the future:

"[Areas] clearly undeveloped at the time of inclusion within the OPA will not be recommended for removal in future remapping efforts unless there is clear and compelling evidence that the OPA was only intended to include areas held for conservation and/or recreation (e.g., a visible park boundary underlying the OPA boundary on the original base map)."

Another interested party made similar comments expressing concern over the proposed removal of these areas from Unit P31P while generally supporting the rest of the proposed changes in Florida.

Service Response: Though the Service's assessment indicates that the area containing the Bonefish Pointe, Martinique, and Finisterre subdivisions met the Coastal Barrier Resources Act (CBRA) criteria for an undeveloped coastal barrier (16 U.S.C. 3503(g)(1)) when it was included within the CBRS in 1990, these subdivisions are recommended for removal from the CBRS to honor a commitment the Service made in 2000 to remove them from the OPA in order to match the OPA boundary to the underlying conservation area. In future remapping efforts, areas that are not held for conservation/recreation, but are (1) interspersed with and/or adjacent to a larger conservation/recreation area and (2) were undeveloped at the time they were included within the CBRS, may be included within OPAs.

Requested Removal of Weakfish Island (aka Humphreys Island) from Unit P31P

Comment: A representative of the owners of a small island (known as Weakfish Island and Humphreys Island) commented that the island should be removed from the CBRS due to an intent to develop the island before its inclusion in the CBRS.

Service Response: The commenter asserts that the development of the island was planned, and had various associated easements, at the time of inclusion within Unit P31P. In determining the development status of coastal barriers, the Service does not consider development plans, permits, 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. The island was undeveloped and qualified for addition to the CBRS in 1990 when it was first included within Unit P31P, and still qualifies today for reclassification to System Unit P31.

Development Status of Unit P30 at the Time of Inclusion within the CBRS

Comment: Two property owners commented that the CBRS status for Unit P30 should be reconsidered because infrastructure existed or development was planned at the time of inclusion.

Service Response: The Service addressed these issues in the supporting documentation that was published along with the draft map dated May 16, 2016; see the document entitled *John H. Chafee Coastal Barrier Resources System Unit P30, Cape San Blas, Florida Summary of Proposed Changes* dated May 2016, which is available on the Service's website at: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/draft-maps.html>. CBRA requires that the Secretary of the Interior consider the following criteria in determining whether a coastal barrier was undeveloped at the time of inclusion within the CBRS: (a) the density of development was less than one structure per five acres of land above mean high tide; and (b) there was 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 (16 U.S.C. 3503(g)(1)).

The Service's 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 still met the CBRA's criteria for an undeveloped coastal barrier when it was designated within the CBRS in 1982 due to the predominant use of public funds rather than private funds. Also, at that time, there were approximately 100 structures on-the-ground, which equaled about one structure per 16 acres of land above mean high tide, well below the density threshold to be considered undeveloped under the CBRA.

In addition, the Service generally does not consider planned development in assessments of areas for removal from the CBRS. The 1982 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 (47 FR 35696)." The Service does not recommend the removal from Unit P30 of areas that were undeveloped at the time of inclusion within the CBRS.

Improper Designation of Cape San Blas within the CBRS; Areas Already Protected

Comment: An individual property owner commented that Cape San Blas was improperly designated within the CBRS, and that land has already been preserved for wildlife through state parks or preserves in this area.

Service Response: When the CBRA was enacted, Congress listed among its findings that "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 that "a program of coordinated action by Federal, State, and local governments is critical to the more appropriate use and conservation of coastal barriers." The Service agrees with these findings and believes that the inclusion of areas within the CBRS gives them an additional layer of protection from future development.

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. 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. Most new Federal expenditures and financial assistance are prohibited

within System Units, whereas the only Federal funding prohibition within OPAs is on Federal flood insurance.

III. Service Recommendations

The Service has prepared final recommended maps, dated October 7, 2016, for four CBRS units, Cape San Blas Unit P30/P30P and St. Andrew Complex P31/P31P, located in Gulf and Bay Counties, Florida. The final recommended maps remove private properties (some of which were inappropriately included within the CBRS in the past) and add undeveloped lands and associated aquatic habitat that meet the CBRA criteria for inclusion within the CBRS (16 U.S.C. 3503(g)(1)).

The Service has reviewed all comments received on the draft maps dated May 16, 2016; no changes were made to the maps based on the comments that were received.

The maps dated October 7, 2016, reflect the Service's recommended changes to certain CBRS units in Florida; however, these changes will only take effect if the revised maps are adopted through legislation enacted by Congress. Copies of the maps and summaries of the recommended changes are available on the Service's website at: www.fws.gov/cbra.

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