TEMPLATE FOR INTERAGENCY CBRA CONSULTATIONS

**Overview and Instructions:**

The Coastal Barrier Resources Act (CBRA) (16 U.S.C. § 3501 et seq.) encourages the conservation of storm prone and biologically rich coastal barriers. No new expenditures or financial assistance may be made available under authority of any federal law for any purpose within the System Units of the [John H. Chafee Coastal Barrier Resources System](https://www.fws.gov/program/coastal-barrier-resources-act/maps-and-data) (CBRS) including, but not limited to:

* construction or purchase of roads, structures, facilities, or related infrastructure
* most projects to prevent the erosion of, or otherwise stabilize, any inlet, shoreline, or inshore area
* any loans, grants, and other financial assistance (e.g., flood insurance and easements).

However, the appropriate federal officer, after consultation with the U.S. Fish and Wildlife Service (Service), may make federal expenditures and financial assistance available within System Units for actions and projects that meet an exception under CBRA ([16 U.S.C. § 3505](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section3505&num=0&edition=prelim)). CBRA imposes no restrictions on actions and projects within the CBRS that are carried out with state, local, or private funding. Any response from the Service to a CBRA consultation request is in the form of an opinion only. **The responsibility for complying with CBRA and the final decision regarding the expenditure of funds for a particular action or project rests with the federal funding agency.**

There are two types of units within the CBRS, System Units and Otherwise Protected Areas (OPAs). OPAs are denoted with a “P” at the end of the unit number (e.g., FL-64P). Most new federal expenditures and financial assistance, including flood insurance, that affect System Units are prohibited. The only federal spending prohibition within OPAs is on flood insurance; other federal expenditures are permitted ([16 U.S.C. § 3505](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section3505&num=0&edition=prelim)(e)). **Consultation with the Service is not needed if the proposed action or project is located within an OPA.** However, agencies providing disaster assistance that is contingent upon a requirement to purchase flood insurance after the fact are advised to disclose the OPA designation and the restrictions on federal flood insurance to the recipient prior to the commitments of funds.

The Service has developed the attached template to help facilitate the CBRA consultation process. This form, and any additional documentation, may be submitted by the federal funding agency to the appropriate [Ecological Services Field Office](https://www.fws.gov/node/267216) to fulfill CBRA’s consultation requirement.

**Guidance for Uncommon Situations:**

***Grandfathering for Existing Structures Added to the CBRS On or After November 25, 2024***

The Bolstering Ecosystems Against Coastal Harm Act or BEACH Act ([Public Law 118-117](https://www.congress.gov/bill/118th-congress/house-bill/5490/text)) established a grandfathering provision for insurable structures (i.e., walled and roofed buildings) in areas added to the CBRS on or after November 25, 2024 ([16 U.S.C. § 3505](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section3505&num=0&edition=prelim)(f)). Eligible structures include:

* Any insurable structures already built before being added to the CBRS on or after November 25, 2024, are exempt from CBRA’s prohibitions on federal financial assistance, including (but not limited to): federal flood insurance, disaster relief, Veterans Administration or Federal Housing Administration mortgages, and hazard mitigation programs.
* Additionally, insurable structures that were not built by November 25, 2024, but are walled and roofed before November 25, 2025, are also grandfathered and exempt from CBRA’s prohibitions on federal financial assistance.

CBRA consultation is not necessary for federal expenditures or financial assistance for buildings that qualify for this provision. Individuals can use the [CBRS Validation Tool](https://www.fws.gov/service/coastal-barrier-resources-system-property-documentation) to determine whether a specific property is within the CBRS and whether it was added to the CBRS on or after November 25, 2024.

***Emergencies Immediately Adjacent to the CBRS and Certain Louisiana Units***

CBRA ([16 U.S.C. § 3504](https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title16-section3504&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGUxNi1zZWN0aW9uMzUwNQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim)(a)(3)) allows for “the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area” in the following two situations *without* consultation with the Service:

1. In **Louisiana Units S01 through S08 and LA-07** for purposes other than encouraging development, and
2. In all units, in cases **where an emergency threatens life, land, and property immediately adjacent to that unit**.

In either of these cases, consultation with the Service is not required by CBRA (though consultation may still be required under other authorities). However, the Service appreciates a notification of the project/activity occurring under this exemption. Notification may be emailed to the appropriate [Ecological Services Field Office](https://www.fws.gov/node/267216).

***Projects affecting South Padre Island Unit in Texas***

CBRA's limitations on federal expenditures or financial assistance do not apply to services or facilities and related infrastructure located outside the boundaries of **South Padre Island Unit T11** which relate to any activity within that unit (except with respect to federal flood insurance or assistance provided by the Department of Housing and Urban Development, which may still be prohibited outside of Unit T11). For guidance regarding projects that may fall into this category, please see [16 U.S.C. § 3505](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section3505&num=0&edition=prelim)(d) and contact the [Texas Coastal Ecological Services Field Office](https://www.fws.gov/southwest/es/texascoastal/) for assistance.

**Additional Resources:**

* [CBRS Mapper and GIS data](https://www.fws.gov/cbra/maps-and-data)
* [CBRA consultation resources](https://www.fws.gov/service/coastal-barrier-resources-act-project-consultation)
* [CBRS in/out property determinations](https://www.fws.gov/service/coastal-barrier-resources-system-property-documentation) (for projects very close to a CBRS boundary)

DATE

NAME

TITLE

OFFICE

STREET ADDRESS

CITY, STATE ZIP

The AGENCY NAME requests a consultation with the U.S. Fish and Wildlife Service (Service) under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. § 3501 et seq.) for the proposedNAME OF ACTION/PROJECT. This project/action is funded by [INDICATE FUNDING SOURCE].

Project Location

*Insert project location. The* [*CBRS Mapper*](https://www.fws.gov/program/coastal-barrier-resources-act/maps-and-data) *can be used to identify the CBRS unit number(s).*

The action or project is located in COUNTY, STATE within (or partially within) Unit(s) UNIT NUMBER(S) of the Coastal Barrier Resources System (CBRS).

# Description of the Proposed Action or Project

# *Provide a brief description of the action or project.*

# DESCRIPTION

Applicable Exception(s) under 16 U.S.C. § 3505(a)

*Identify the appropriate exception(s) for the action or project.*

## General Exceptions

|  |  |
| --- | --- |
|  | 16 U.S.C. § 3505(a)(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. |
|  | 16 U.S.C. § 3505(a)(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. *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 CBRS (16 U.S.C.* § *3505(b)).* |
|  | 16 U.S.C. § 3505(a)(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. *While this exception generally prohibits expansions, there is a special provision in CBRA that allows for the expansion of highways in Michigan under this exception (see 16 U.S.C.* § *3505(c)).* |
|  | 16 U.S.C. § 3505(a)(4): **Military activities** essential to national security. |
|  | 16 U.S.C. § 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto. |
|  | 16 U.S.C. § 3505(a)(7): Use of a **sand source within a System Unit** by Federal coastal storm risk management projects or their predecessor projects that have used a System Unit for sand to nourish adjacent beaches outside the System pursuant to section 701n of title 33 at least once between December 31, 2008, and December 31, 2023, in response to an emergency situation prior to December 31, 2023.  *Based on* [*House Report 118-667*](https://www.congress.gov/congressional-report/118th-congress/house-report/667) *and the* [*Congressional Record*](https://www.congress.gov/congressional-record/volume-170/issue-149/house-section/article/H5713-2)*, this exception applies only to the following four U.S. Army Corps of Engineers projects:*   * ***Townsends Inlet to Cape May Inlet, New Jersey*** *project for coastal storm risk management and emergency response purposes* * ***Wrightsville Beach, North Carolina*** *coastal storm risk management* * ***Carolina Beach and vicinity, North Carolina*** *coastal storm risk management* * ***Folly Beach, South Carolina*** *coastal storm risk management*   *According to the legislative history referenced above, to the best of the Corps' knowledge, no other projects would be included now or in the future.* |

## Specific Exceptions

The exceptions below apply only if the project or action is also consistent with the purposes of CBRA, which are: “to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers…by restricting future federal expenditures and financial assistance which have the effect of encouraging development; and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved” ([16 U.S.C. § 3505](https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&path=%2Fprelim%40title16%2Fchapter55&req=granuleid%3AUSC-prelim-title16-section3501&num=0&saved=L3ByZWxpbUB0aXRsZTE2L2NoYXB0ZXI1NQ%3D%3D%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGUxNi1jaGFwdGVyNTU%3D%7C%7C%7C0%7Cfalse%7Cprelim)(b)).

Therefore, **if selecting any of the exceptions below, it is necessary to describe how the proposed action or project is consistent with these purposes**.

|  |  |
| --- | --- |
|  | 16 U.S.C. § 3505(a)(6)(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. |
|  | 16 U.S.C. § 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto. |
|  | 16 U.S.C. § 3505(a)(6)(C): Projects under chapter 2003 of title 54 and the **Coastal Zone Management Act** of 1972 (16 U.S.C. 1451 et seq.). *Chapter 2003 of title 54 refers to expenditures under the* ***Land and Water Conservation Fund****. For additional information on the use of this exception for projects under the CZMA, please see this* [*fact sheet*](https://www.fws.gov/media/federal-expenditures-and-financial-assistance-under-coastal-zone-management-act-fact-sheet). |
|  | 16 U.S.C. § 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications. |
|  | 16 U.S.C. § 3505(a)(6)(E): **Emergency actions necessary to the saving of lives and the protection of property and the public health and safety**, if such actions are performed pursuant to sections [5170a](https://uscode.house.gov/view.xhtml?req=(title:42%20section:5170a%20edition:prelim)), [5170b](https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section5170b&num=0&saved=%7CKHRpdGxlOjQyIHNlY3Rpb246NTE3MGEgZWRpdGlvbjpwcmVsaW0p%7C%7C%7C0%7Cfalse%7Cprelim), [5173](https://uscode.house.gov/view.xhtml?req=(title:42%20section:5173%20edition:prelim)), and [5192](https://uscode.house.gov/view.xhtml?req=(title:42%20section:5192%20edition:prelim)) of title 42 (certain sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act) **and are limited to actions that are necessary to alleviate the applicable emergency.** |
|  | 16 U.S.C. § 3505(a)(6)(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.** *Please note that for this exception, FEMA regulations (*[*44 CFR Part 206.347(c)(5)*](https://www.ecfr.gov/current/title-44/part-206/section-206.347#p-206.347(c)(5))*) indicate that “no such facility may be repaired, reconstructed, or replaced unless it is an ‘existing facility’” (i.e., one that was constructed prior to its inclusion in the CBRS and has not been substantially improved or expanded since).* |
|  | 16 U.S.C. § 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system. *For additional information on the use of this exception, please see this* [*Frequently Asked Questions*](https://www.fws.gov/media/frequently-asked-questions-nonstructural-shoreline-stabilization-projects) *document*. |
|  | 16 U.S.C. § 3505(a)(6)(H): **Aquaculture operations** that produce shellfish (including oysters, clams, and mussels), cultivate micro- or macro-algae, or do not require the use of aquaculture feeds; and adhere to best management practices (BMPs) and conservation measures recommended by the Service through the consultation process. *Please contact the appropriate* [*Ecological Services Field Office*](https://www.fws.gov/node/267216) *to determine if any BMPs or conservation measures will apply.* |

Justification for Exception(s)

*Briefly explain how the proposed action or project meets the exception(s) under CBRA identified above.* ***If the exception(s) cited above is under 16 U.S.C. § 3505(a)(6), the justification must also include an explanation of how the proposed action or project is consistent with the purposes of CBRA (see above).***

JUSTIFICATION

Contact Information

*Include contact information and where the response should be sent.*

FUNDING AGENCY SIGNATORY AND TITLE

U.S. Fish and Wildlife Service Response

Below is the Service's response to AGENCY NAME’S request for a consultation under

CBRA for ACTION/PROJECT NAME. This response represents the Service’s opinion. **The final decision regarding the expenditure of funds for this action or project rests with the federal funding agency.** AGENCY NAME has fulfilled its obligation to consult with the Service under CBRA for this particular action or project within the CBRS. Please note that any new commitment of federal funds associated with this action or project, or change in the project design and/or scope, is subject to CBRA’s consultation requirement.

The Service has reviewed the information provided by AGENCY NAME, and believes the referenced action/project is:

|  |  |
| --- | --- |
|  | Not located within a System Unit and CBRA does not apply (except with respect to the restrictions on federal flood insurance) |
|  | Located within a System Unit and meets the exception(s) to CBRA selected above |
|  | Located within a System Unit and meets different exception(s) than the one(s) selected above (see additional information/comments below) |
|  | Located within a System Unit and does not meet an exception to CBRA (see additional information/comments below) |

Additional Information/Comments

*Include any additional information/comments.*

This response does not constitute consultation for any project pursuant to section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. § 1531 et seq.), incidental take authorization under the Marine Mammal Protection Act of 1972 (Sec. 101 (a)(5)(A) and 101 (a)(5)(D); 16 U.S.C. § 1361 et seq.), comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. § 661 et seq.), or other authorities administered by the Service; nor does it preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. § 4321 et seq.).

SERVICE FIELD OFFICE SIGNATORY AND TITLE DATE