

FWS.CW.0380

Memorandum

To: Ralph Morgenweck  
Assistant Director, Fish and Wildlife Enhancement  
Fish and Wildlife Service

From: Charles P. Raynor  
Assistant Solicitor  
Fish and Wildlife

Subject: Interpretation of Section 6(a)(6)(G) of the Coastal  
Barrier Resources Act

Introduction

You have requested our opinion as to whether a project to renourish a beach outside the Coastal Barrier Resources System (System) utilizing sand removed from within a unit of the System can qualify for the shoreline stabilization projects exemption in section 6(a)(6)(G) of the Coastal Barrier Resources Act (Act), 16 U.S.C. 3505(a)(6)(G). We conclude this exemption applies only to projects designed to stabilize the shoreline of a System unit and therefore does not apply to projects to renourish beaches outside the System even if the other requirements of section 6(a)(6)(G) are met.

Background

Section 5(a) of the CBRA, 16 U.S.C. 3504(a), prohibits new Federal expenditures or financial assistance for activities within the System, unless the activities are covered by one of the exceptions listed in section 6. The shoreline stabilization projects exception in section 6(a)(6)(G) covers:

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

. . . .

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

We understand Proposed beach renourishment projects within the CBRS that meet these standards and are consistent with the CBRA

purposes may receive Federal funding.

### Discussion

The Corps proposes to dredge approximately 975,000 cubic yards of sand from within the Midway Inlet Unit for use in renourishing the beach on Pawley's Island, which is not within the CBRS. We interpret the language of section 6(a)(6) of the CBRA, however, as referring to nonstructural projects devoted to stabilizing the shoreline of a Unit of the CBRS by mimicking, enhancing, or restoring the natural stabilization systems of the Unit. In other words, beach renourishment projects must be aimed at renourishing the beach of the CBRA Unit in order to qualify for Federal funding under section 6(a)(6). In contrast, the Corps' Pawley's Island project is intended solely to accomplish the renourishment of a beach outside of the CBRS. We therefore conclude that Federal funding or financial assistance for such a project would violate section 5 of the CBRA. Our opinion would not differ if the project were designed instead to renourish beaches both within and without the CBRS, because we interpret section 6(a)(6) to refer to projects designed to renourish solely a beach within the CBRS.

Even if this project were intended to renourish the beach of the Midway Inlet Unit, we believe it still would not qualify for a Federal funding exception because it would be inconsistent with the CBRA purposes. As noted above, the CBRA purposes include minimizing damage to fish, wildlife, and other natural resources of coastal barriers. In this case, the proposed dredging would damage the productive natural systems of Midway Inlet in several ways. The dredging would result in the outright destruction of all benthic organisms encountered by the dredging cutterhead that would be used. In addition, the borrow area, which currently is shallow, would be converted to deeper, less productive open water. The deepening of this area would also cause sloughing and/or erosion of adjacent shallow areas and thereby reduce their habitat values.

The existing shallow water of the borrow area provides, in conjunction with adjacent beaches, habitat for a number of species of birds and turtles. These include Wilsons plovers and Least terns (classified as threatened by the State of South Carolina) that nest and feed in the existing habitat. The loggerhead turtle (Federally listed as threatened under the Endangered Species Act) utilizes these beaches for nesting and the shallow ridged shoals for feeding and nesting during its "internesting period" (the time interval between nesting emergencies).

Finally, recent studies by the Corps of Engineers of the effects of other renourishment projects on North Carolina beaches suggest that they result in a reduction in nearshore and surf fisheries caused by disturbances to intertidal communities from renourishment activities.

### Conclusion

The renourishment project proposed by the Army Corps of Engineers, dredging of sand from within the Midway Inlet Unit in order to renourish a beach outside the Coastal Barrier Resources System, does not fall within the CBRA section 6(a)(6) Federal funding exception, which applies only to projects for renourishment of beaches within the CBRS. In addition, the project would lead to significant adverse impacts on the natural resources of the Midway Inlet Unit, although section 6(a)(6) projects must be consistent with the CBRA purpose of minimizing damage to the natural resources of coastal barriers. For each of these reasons, we conclude that Federal funding or financial assistance for this beach renourishment project would violate section 5 of the Coastal Barrier Resources System.

Please refer any questions to David Gayer (343-2172).

cc: Coastal Barriers Coordinator  
J. G. Harvey Geitner, Charleston, S.C. Field Office, FWS