

John H. Chafee Coastal Barrier Resources System

Moreno Point Unit P32/P32P

Summary of Public Comments Received and U.S. Fish and Wildlife Service Responses and Recommendations

I. Overview

The U.S. Fish and Wildlife Service (Service) prepared draft revised boundaries for two existing Coastal Barrier Resources System (CBRS) units in Okaloosa and Walton Counties, Florida – Moreno Point Unit P32/P32P. The Service held a 45-day public comment period on the proposed boundaries from January 4 through March 5, 2021. The proposed boundaries were prepared in accordance with section 4 of the 2006 Coastal Barrier Resources Reauthorization Act (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 boundaries.

The Service announced the availability of the proposed boundaries and the opportunity to provide comments in a notice published in the *Federal Register* on January 4, 2021 (86 FR 118). The Service sent letters dated January 8, 2021, to approximately 125 stakeholders, including members of Congress; federal, state, and local officials; and nongovernmental organizations. The draft revised boundaries, *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 ten comments regarding the proposed changes to the CBRS in Okaloosa and Walton Counties, Florida. Most commenters supported the proposed changes. No commenters opposed the proposed changes, though some sought further removals that are not recommended by the Service.

The Service received comments from the following entities regarding the proposed changes to Unit P32:

- Representative of Henderson Park Inn, Henderson Beach Resort Hotel, LLC, and Dunavant Gulf, LLC (requests removal from the CBRS of certain developed areas, including the properties owned by the company)

- One local resident (questions why some Crystal Beach properties are included within the CBRS and others are not)

The Service received comments from the following entities regarding the proposed changes to Unit P32P:

- City of Destin (supports removal from the CBRS of Silver Shells Beach Resort, private property to the west of Henderson Beach State Park)
- Three property owners and the Silver Shells Property Owners Association (supports removal from the CBRS of Silver Shells Beach Resort)

The Service received the following comments that were not specific to one particular unit:

- Audubon Florida (generally supports the Coastal Barrier Resources Act (CBRA) and the proposed changes to the Florida units)
- Florida Wildlife Federation (generally supports the expansion of the CBRS)

- U.S. Environmental Protection Agency (EPA) (recommends including future coastal barrier and saltmarsh migration buffers around CBRS units)

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-2019-0058-0001, which is the docket number for the public review notice.

II. Summary of Issues Raised and Service Responses

A summary of specific issues raised during the comment period and the Service’s responses are below.

Request for Removal from Unit P32 of Certain Developed Areas

Comment: One commenter requested that the portions of a company’s property located within Unit P32 (see Figure 1) be removed from the CBRS as there are other developed residential areas and a roadway (Emerald Coast Parkway) that are excluded from the CBRS. The questions of how and when

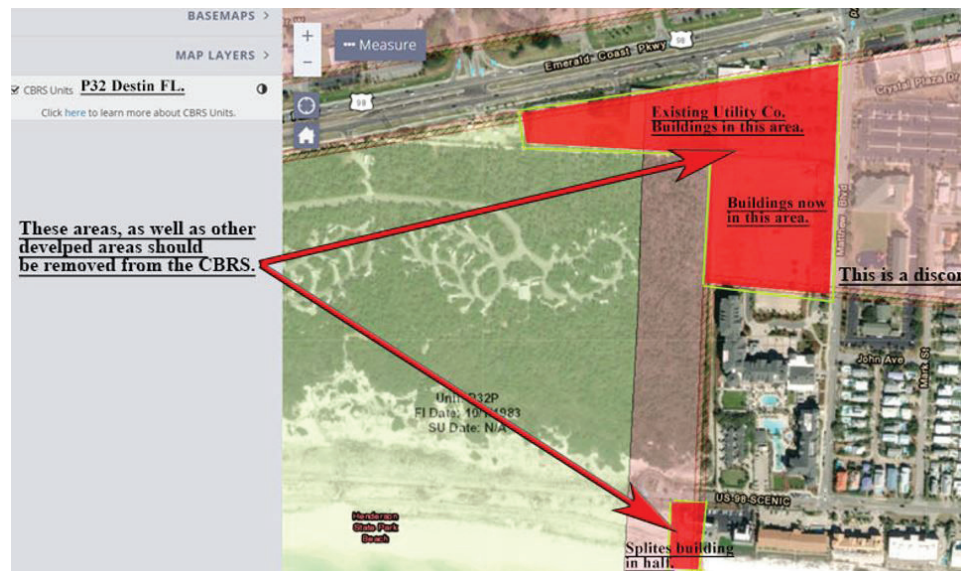


Figure 1 - Excerpt of map that the commenter submitted (comment number FWS-HQ-ES-2019-0058-0016) showing the areas of concern shaded in red

these prior areas were excluded and why the priority was granted to these areas to the exclusion of others are also raised by the commenter. In addition, the commenter stated that other developed areas within this unit should be removed from the CBRS.

Service Response: The Service has carefully assessed the areas within Unit P32 (including around the westernmost excluded area where the properties in question are located) and found that these areas met CBRA's criteria for an undeveloped coastal barrier when they were first included in 1982 within the CBRS (see Figure 2). The Department of the Interior developed the original CBRS map for this area following a lengthy process involving reviews of aerial photography, on-the-ground inspections, several public information sessions, and two lengthy comment periods. There were 12 structures and a main road on the ground when the area was included within Unit P32 in 1982. Along what is now known as Scenic Highway 98, three clusters of development that were already on the ground

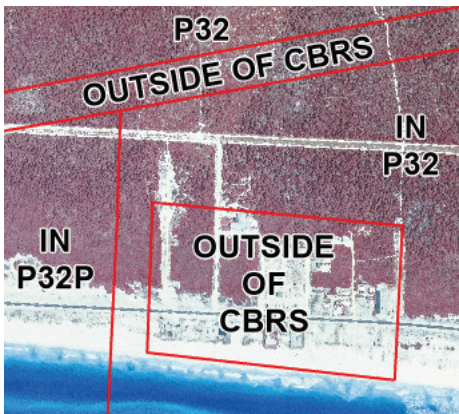


Figure 2 - The aerial image above was taken on May 9, 1982, and shows that the areas of concern identified in Figure 1 were undeveloped when they were included within Unit P32. The image is overlaid with the existing CBRS boundary (shown in red).

in 1982 were excluded from the CBRS. The unit was reviewed again in the mid-1980s and additional comment periods were held in 1985 and 1987. Congress reaffirmed the inclusion of the unit within the System through the Coastal Barrier Improvement Act in 1990. Much of Unit P32 has developed despite the CBRS designation, and the Service has received numerous requests since 2006 from property owners and the City of Destin to reevaluate the inclusion of the areas within Unit

P32. However, development that occurs after CBRS designation is not grounds for removal.

In 1982, when this area was proposed for inclusion within the CBRS, the State of Florida had plans to relocate US Highway 98 (now also known as Emerald Coast Parkway) to a more inland route and to expand it to four lanes. The CBRS map that Congress adopted through CBRA in 1982 was intended to exclude the right-of-way for the new highway location (see Figure 3).

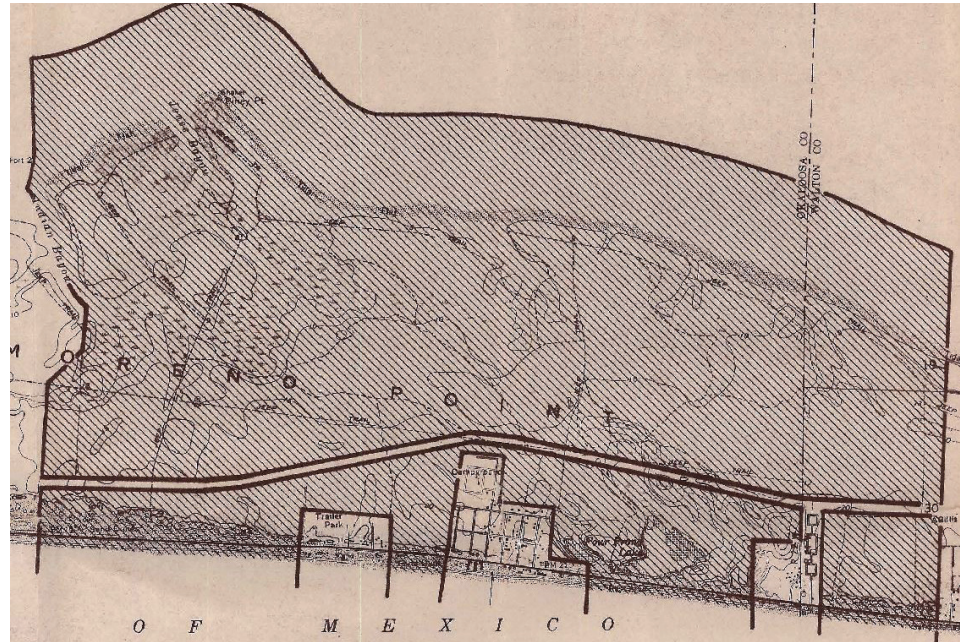


Figure 3 - Excerpt of the September 30, 1982, map for Unit P32 that was adopted by Congress via the Coastal Barrier Resources Act (Pub. L. 97-348).

More information concerning the assessment of Unit P32 and the criteria for an undeveloped coastal barrier can be found in the Technical Corrections Assessment section on the Summary of Proposed Changes for this unit, which is available at <https://www.fws.gov/cbra/projects/technical-corrections/P32-Proposed-Unit-Summary.pdf>.

Why Are Some Crystal Beach Properties Included Within Unit P32 and Others Are Not

Comment: One commenter questions why some Crystal Beach properties are included within CBRS Unit P32 since December 21, 2018, and some are not. In particular, the eastern end of Luke Avenue is not within the CBRS while the western end is. Many of the homes in this area are not in a flood zone. An interested party had planned to purchase a home on Luke Avenue in Destin

with a federal loan, but was unable to complete the transaction when it was discovered that the property is located within the CBRS

Service Response: The Service has carefully assessed the areas within Unit P32 (including along Luke Avenue) and found that the areas met CBRA's criteria for an undeveloped coastal barrier when they were first included in 1982 within the CBRS. Development that occurs after CBRS designation is not grounds for removal. Unit P32 was intended to include the portions of

Moreno Point that were undeveloped in 1982. Therefore, along what is now known as Scenic Highway 98, three clusters of development that were already on the ground in 1982 were excluded from the CBRS. The eastern portion of Luke Avenue that is outside of the CBRS was on the ground in 1982 and had some development along it; however, the western portion of the road was not constructed until after the area was included within the unit (see Figure 4).

The portions of Luke Avenue that are within Unit P32 on the official CBRS map have been within the CBRS since October 18, 1982, and the map for Unit P32 was not among the CBRS maps revised on December 21, 2018, via Pub. L. 115-358. More information concerning the assessment of Unit P32 and the criteria for an undeveloped coastal barrier can be found in the Technical

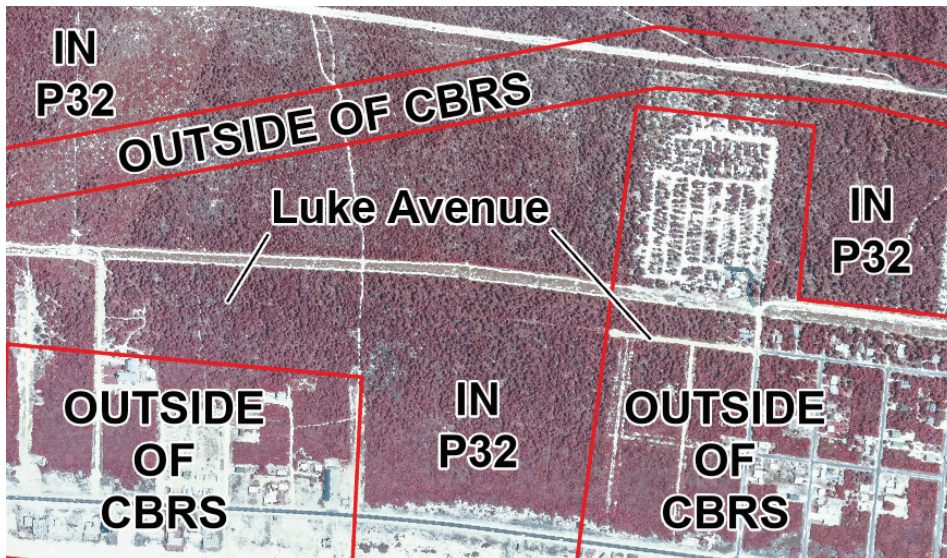


Figure 4 - Approximate location of Luke Avenue within Unit P32 identified on an aerial image dated May 9, 1982. The area where the western portion of Luke Avenue is now located was undeveloped when it was first included within the CBRS. The existing CBRS boundary of the unit is shown in red.

Corrections Assessment section on the Summary of Proposed Changes for this unit, which is available at <https://www.fws.gov/cbra/projects/technical-corrections/P32-Proposed-Unit-Summary.pdf>.

The commenter also indicated that many of the homes in the area are not in a flood zone. However, the Special Flood Hazard Areas (SFHAs) mapped on the Federal Emergency Management Agency's (FEMA's) Flood Insurance Rate Maps (FIRMs) are areas that have a one percent annual chance of flooding in a given year, and these areas are designated for flood insurance rating purposes. FIRMs "do not provide a depiction of the overall flood risk that includes the impacts of more intense events."¹ Areas that are not mapped within the SFHA may still be vulnerable to storm surge and other hazards, including sea level rise and wind. There is no direct relationship between the SFHAs mapped on FEMA's FIRMs and the CBRS boundaries. Areas are not required to be in any particular type of flood zone or have a history of flooding to be included within the CBRS.

Recommendation to Include Future Coastal Barrier and Saltmarsh Migration Buffers Around CBRS Units

Comment: EPA commented that it recommends CBRS map modifications include the addition of buffers around these resources to enable on-going and future migration of the coastal systems and adjacent saltmarsh areas. EPA also provided links to two studies that may help inform the need to consider mapping additional available land to serve as buffers for the long-term protection of these systems.

Service Response: The impacts of sea level rise and storm surge due to climate change will greatly increase both the risk associated with developing coastal barriers and the value of these areas for fish and wildlife habitat and as cost-effective buffers to protect mainland communities against coastal storm damage. CBRA removes the federal financial incentive to develop ecologically-sensitive and unstable coastal barrier areas (i.e., by restricting most new federal funding for flood control projects, disaster assistance,

and flood insurance). The Service has a mandate to make recommendations to Congress for expansions to the CBRS.² Consistent with the statutory purposes, the Service will consider the means and measures by which the long-term conservation of these areas could be achieved.³ The Service intends to explore changes that could be made in the mapping of CBRS units in the future to address the migration of coastal barriers (and adjacent aquatic habitat) inland due to climate change and sea level rise. However, the Service did not consider this concept in the preparation of the final recommended maps for the two CBRS units in Walton and Okaloosa Counties, Florida.

III. Service Recommendations

The Service has prepared a final recommended map, dated April 29, 2021, for two CBRS units, Moreno Point Unit P32/P32P, located in Okaloosa and Walton Counties, Florida. The final recommended map removes private properties that were inappropriately included within the CBRS in the past and adds undeveloped lands and associated aquatic habitat that meet the CBRA criteria for inclusion within the CBRS.⁴

The Service has reviewed all comments received during the comment period; no changes were made to the CBRS boundaries based on the comments.

The map dated April 29, 2021, reflects the Service's recommended changes to certain CBRS units in Florida; however, these changes will only take effect if the revised map is adopted through legislation enacted by Congress. Copies of the map and summaries of the recommended changes are available on the Service's website at: www.fws.gov/cbra.

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1 Federal Emergency Management Agency, U.S. Army Corps of Engineers, and National Oceanic and Atmospheric Administration, Two Coastal Flood Maps: Flood Insurance Rate Maps vs. Storm Surge Inundation Maps, accessed April 21, 2021, https://www.iwr.usace.army.mil/Portals/70/docs/frmp/FRMP%20Summer%202014/CoastalFloodMapsFactsheet_Final.pdf.

2 This mandate is found in section 4(c)(3)(D) of the 2006 Coastal Barrier Resources Reauthorization Act (Pub. L. 109-226).

3 Coastal Barrier Resources, U.S. Code 16 (2018), § 3501(b).

4 Coastal Barrier Resources, § 3503(g)(1).