The Honorable David Bernhardt
Secretary of the Interior
U.S. Department of the Interior
1849 C St. NW
Washington, DC 20240

December 5, 2019

Dear Secretary Bernhardt:

We are writing to express our deep concern over the recent decision to overturn the quarter-century long interpretation of the Coastal Barrier Resources Act (CBRA) regarding sand mining in Coastal Barrier Resources System (System) units.[1] Our organizations represent millions of sportsmen, conservationists, fiscal conservatives, and state officials. The CBRA is unique in its approach to coastal management. As President Reagan said in its praise as he signed it into law, "the CBRA simply adopts the sensible approach that risk associated with new private development in … sensitive [coastal] areas should be borne by the private sector, not underwritten by the American taxpayer."[2] The CBRA was enacted with the specific goal of protecting undeveloped coastal areas that are important habitat for fish, birds, and other wildlife from federal taxpayer expenditures. The recent decision to open up these coastal areas to sand mining is contrary to the CBRA's intent, overturns long-standing policy with no assessment of the possible impacts, and would harm some of the most important remaining habitat on the coasts. We urge you to withdraw this new interpretation of the law and reinstate the long-standing interpretation that has been utilized by this and previous Administrations for the past 25 years.

Secretary of Interior James Watt spoke to the CBRA's core objectives in a 1982 letter to Congress in which he noted the many ecological benefits of protecting coastal barriers, and the need to break the cycle of federally funded coastal development and redevelopment:

> While they are hazardous and expensive for human habitation and development, coastal barriers are excellent habitat for fish and wildlife…[they] nurture vital fish stocks important for commercial and recreational fishing…[and] provide migration and wintering habitat for migratory waterfowl, shorebirds and raptors, as well as breeding habitat for shore and wading birds…[T]here can be no question that Federal investments have stimulated and facilitated development of storm-prone coastal barriers…Taxpayers subsidize development, a hurricane sweeps an area, and the government assists, even encourages, rebuilding. [The

[1] Bernhardt, David, Secretary of the Interior, "Letter to The Honorable Jeff Van Drew, U.S. House of Representatives." November 4, 2019.
[2] Reagan, President Ronald, "Statement on Signing the Coastal Barrier Resources Act." October 18, 1982. www.presidency.ucsb.edu

> CBRA] charts a sensible course for preventing this cycle from recurring, one that will conserve both tax dollars and natural resources.[3]

The benefits from the CBRA applauded by President Reagan and Secretary Watt were further supported by the Assistant Solicitor in a 1994 memo clarifying that federal dollars could not be spent to mine sand from System units for the purpose of using that sand outside of the System. This interpretation has been implemented consistently by the U.S. Fish and Wildlife Service (FWS) for a quarter-century. The Service has supported it through numerous challenges and several administrations, including the Trump Administration. A December 2018 letter from the Fish and Wildlife Service (FWS) Principal Deputy Director reiterated the appropriateness of the interpretation and rebuffed arguments that it should be overturned.[4]

The CBRA has always allowed state or local governments or private interests to pay to dredge System units for sand to be used outside of the System. But the law, and the 1994 Assistant Solicitor's opinion about implementation of it, shielded the federal taxpayer from having to pay for these activities. Allowing federal tax dollars to be spent to dredge System units to supply beach renourishment operations that themselves consume billions of dollars in no way reduces federal expenditures that support hazard-prone coastal development, which is an explicit goal of the CBRA. Over the past 25 years, beach renourishment projects along the Gulf of Mexico and Atlantic Coast have cost a staggering $9.7 billion.[5] Much of that expenditure has been shouldered by the federal taxpayer.[6] Yet, a recent study found that beach renourishment "encouraged development in places especially vulnerable to damage. . . houses in nourishing zones are significantly larger and more numerous than in non-nourishing zones."[7] The study concluded that beach renourishment "is compounding coastal risk in zones already characterized by high vulnerability."[8] One of the CBRA's three fundamental objectives is to discourage development in storm- and hazard-prone coastal areas by, as the law states, "restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers."[9]

The 1994 interpretation of the CBRA was entirely consistent with the CBRA's goal of discouraging development and unwise federal expenditures. The report that accompanied Senate passage of the CBRA notes that:

> This legislation recognizes that coastal barriers should be conserved in their natural state for two reasons. First . . . . these areas provide essential habitat for fish and wildlife. Secondly, it is evident that Federal tax dollars encourage development . . . and then

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[3] Watt, James, Secretary of the Interior, "Letter to the Hon. Walter B. Jones, Chairman, Committee on Merchant Marine and Fisheries, House of Representatives." February 2, 1982.
[4] Everson, Margaret, Principal Deputy Director, "Letter to The Honorable Garret Graves, House of Representatives." December 21, 2018.
[5] Program for the Study of Developed Shorelines, Western Carolina University. http://beachnourishment.wcu.edu/
[6] The typical cost-share for a beach renourishment project is 65% federal and 35% state/local.
[7] Armstrong, Scott B., et al, "Indications of a positive feedback between coastal development and beach nourishment," in *Earth's Future,* a publication of the American Geophysical Union. November 10, 2016. https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2016EF000425
[8] Ibid.
[9] Public Law 97-348 (96 Stat. 11653, 16 U.S.C. 3501 et seq.) "Section 2(b) PURPOSE." Enacted October 18, 1982.

> perpetuate that development . . . Federal expenditures which subsidize and thereby encourage development in these dynamic areas constitute an unwise investment … By aiding development of coastal barriers, the Federal Government is diminishing the productivity of estuaries and wetlands in terms of fish and wildlife resources; increasing risks to life and property; and, reducing the capacity of such areas to protect the mainland from storms.[10]

Allowing federal tax dollars to be used to mine System units for sand also directly threatens fish and wildlife habitat that the CBRA was enacted to specifically protect. Under the new policy, areas that were previously off-limits to federally funded mining activities will become available. This will incentivize sand mining in sensitive, undeveloped coastal areas that were previously shielded from federally-funded mining activities. Indeed, the stated purpose of the new policy is to allow "sand from units within the System [to] be used to renourish beaches located outside of the System,"[11] a practice that has been disallowed under the past 25 years when it involved federal tax dollars.

The negative impacts on the environment from sand mining operations could be significant. Scientists have identified harm caused to coastal ecosystems from sand mining:

- The U.S. Fish and Wildlife Service reported that, "As sand sources for beach renourishment projects have become more limited, the mining of [inlets] for sediment has increased. This is a problem because exposed [inlets] and sandbars are prime roosting and foraging habitats for piping plovers,"[12] a threatened species under the Endangered Species Act.
- The Army Corps of Engineers acknowledges that, "Practices such as sand mining, beach replenishment, dredging . . . on beaches and islands are widespread and have taken a toll on coastal birds,"[13] further noting that "coastal inlets are some of the most important habitats for shorebirds."[14]
- Scientists at the Virginia Institute of Marine Science (VIMS) reported that, "Even if the excavation [from sand mining] is only centimeters deep, it will have a profound effect on the resident infauna and lesser, but none-the-less real, consequences on the local pelagic organisms and physical processes."[15]

Along with negative impacts to fisheries, birds and other wildlife, sand mining also reduces the resiliency of coastal barriers. Coastal geologists have examined impacts on inlets that

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[10] Report No. 97-419, 97th Congress, 2d Session, "Coastal Barrier Resources Act, Report together with Additional Views [To accompany S. 1018.]" May 26, 1982. P. 3.
[11] Bernhardt, David, Secretary of the Interior, op cit.
[12] U.S. Fish and Wildlife Service, New Jersey Field Office, "Rufa Red Knot (*Calidris canutus rufa*) [threatened.]" May 11, 2016. https://www.fws.gov/northeaset/njfieldoffice/endangered/redknot.html
[13] Dabees, Mohamed A. and Kraus, Nicholas C., on contract with the U.S. Army Corps of Engineers' Vicksburg, MS Lab. *Evaluation of Ebb-Tidal Shoals as a Sand Source for Beach Renourishment: General Methodology with Reservoir Model Analysis.* 2004. P. 1. http://cirp.usace.army.mil/Downloads/PDF/dabees-kraus-FSBPA04.pdf
[14] Harrington, B.R. *Coastal inlets as strategic habitat for shorebirds in the southeastern United States.* DOER Technical Notes Collection. ERDC TN-DOER-E25. Vicksburg, MS: U.S. Army Engineer Research and Development Center. 2008.
[15] Hobbs, C.H. *An Investigation of Potential Consequences of Marine Mining in Shallow Water: An Example from the Mid-Atlantic Coast of the United States.* Virginia Institute of Marine Sciences. Published in *Journal of Coastal Research.* Winter 2002. http://journals.fcla.edu/jcr/article/viewFile/81252/78392

have been mined and have determined "the mining of sediment from coastal shoals upsets the inlet system equilibrium and can lead to increased erosion of the adjacent inlet shorelines."[16] Mining destabilizes the natural system because, "[t]he mining of material from inlet shoals for use as beach fill is not equivalent to the natural sediment bypassing . . . most notably for the massive volumes involved that are 'transported' virtually instantaneously instead of gradually and continuously …"[17]

We are dismayed by the Department's apparent lack of careful review of the economic and ecological impacts of overturning this long-standing policy. The policy change was announced in letters to Reps. Van Drew, Rouzer and Graves, dated November 4, 2019,[18] in response to a letter sent by them on October 25, 2019.[19] Only six working days transpired between the letter seeking the policy's reversal and the letter granting that reversal, with no assessment of the economic and ecological impacts, and no opportunity for public review and comment. We are concerned that this is woefully insufficient time to adequately examine the 25-year-old policy, the ways it has been implemented, the challenges it has repeatedly withstood, and the implications to federal resources and the environment from its overturning.

Based on these concerns, we strongly urge you to withdraw the new Solicitor's opinion and reinstate the prior interpretation of the CBRA that is consistent with the purposes – and spirit – of the law.

Sincerely,

American Littoral Society
Association of State Floodplain Managers
Association of State Wetland Managers
National Audubon Society
Natural Resources Defense Council
R Street Institute
Southern Environmental Law Center

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[16] Pilkey, Orrin H., et al. "Mining of Coastal Sand: A Critical Environmental and Economic Problem for Morocco." Program for the Study of Developed Shorelines, Western Carolina University. 2007. https://www.wcu.edu/WebFiles/PDFs/Morocco_White_Paper.pdf

[17] Ibid, pp. 17-18.

[18] Bernhardt, David, Secretary of the Interior, op cit.

[19] Rep. Van Drew, Jeff, Rep. Rouzer, David, Rep. Graves, Garrett, "Letter to The Honorable David Bernhardt, Secretary, U.S. Department of Interior." October 25, 2019.