



# Environmental Handbook

---

## Coastal Barrier Resources Act

This handbook provides a regulatory background and outlines the process steps necessary to comply with the Coastal Barrier Resources Act (CBRA) of 1982.

**Table of Contents**

1.0 Introduction ..... 2

    1.1 TxDOT Policy ..... 2

    1.2 Applicable Project Types ..... 2

    1.3 Additional Resources ..... 2

2.0 Regulatory Overview ..... 2

    2.1 Coastal Barrier Resources Act (CBRA) ..... 3

    2.2 Paths to Compliance ..... 3

3.0 Procedural Requirements ..... 3

4.0 Coastal Barrier Resources System (CBRS) ..... 5

5.0 Exceptions ..... 5

    5.1 Essential Link Exception ..... 5

    5.2 CBRA Consistent Exception ..... 5

6.0 Agency Coordination ..... 6

7.0 Public Participation ..... 6

8.0 Documentation ..... 6

9.0 Review and Approval ..... 6

10.0 Glossary ..... 6

11.0 Abbreviations and Acronyms ..... 7

Appendix A: Revision History ..... 8

## 1.0 Introduction

This handbook provides a regulatory background and outlines the process steps necessary to document compliance with the Coastal Barrier Resources Act (CBRA) of 1982 and the National Environmental Policy Act (NEPA). Project sponsors can use this handbook to ensure CBRA compliant determinations and produce sufficient documentation. The federal agency funding the project is responsible for ensuring compliance with the CBRA. The Federal Highway Administration (FHWA) is the most common funding agency and assigned this responsibility to the Texas Department of Transportation (TxDOT) on December 16, 2014 for FHWA projects.

### 1.1 TxDOT Policy

It is TxDOT policy to solicit an opinion from U.S. Fish and Wildlife Service (USFWS) for applicable projects to ensure CBRA compliant environmental decisions.

### 1.2 Applicable Project Types

Compliance with the CBRA is required for all projects located, in whole or in part, within a system unit of the Coastal Barrier Resources System (CBRS) that are federally funded. If the project does not use federal funds or receive any type of federal financial assistance (defined in [16 USC 3502\(3\)](#)) the CBRA does not apply. Addressing the CBRA is required only for projects in Jefferson, Chambers, Galveston, Brazoria, Matagorda, Calhoun, Aransas, Nueces, Kleberg, Kenedy, Willacy, and Cameron Counties, although only portions of each of these counties are within the CBRS boundaries.

### 1.3 Additional Resources

- [Official CBRS Boundary Maps](#)
- [Unofficial Interactive CBRS Mapper](#)
- [CBRA Inter-agency Consultation Template](#)

## 2.0 Regulatory Overview

This section outlines the regulations that drive TxDOT policy and procedures related to the CBRA. The regulations for the CBRA, which reflect subsequent amendments and other related acts, are codified at [16 USC 3501-3510](#). Compliance with the CBRA is a substantive requirement; projects within a system unit that do not meet the exception criteria may not be processed with federal funding. As the keeper of the official maps that are used to determine the geographic extent of applicability for provisions of the CBRA, USFWS is the federal agency that the TxDOT Environmental Affairs Division (ENV) will consult with as necessary. The CBRA includes a procedural requirement for federal agencies to consult USFWS to solicit an opinion on CBRS exception determinations.

Under Section 3.2.1, the [Memorandum of Understanding between the Federal Highway Administration and the Texas Department of Transportation Concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327](#), FHWA assigned TxDOT the responsibility for ensuring compliance with the CBRA for FHWA projects.

## 2.1 Coastal Barrier Resources Act (CBRA)

The CBRA was enacted in 1982 to discourage development in certain coastal areas that are vulnerable to hurricane damage and are host to valuable natural resources. The act designated certain undeveloped coastal areas as part of the CBRS and made those areas ineligible for most new federal expenditures and financial assistance. The CBRS is delineated and maintained by the U.S. Department of the Interior through USFWS.

While most activities that involve federal expenditures are prohibited within the CBRS, several categories of activities are listed as exceptions ([16 USC 3505\(a\)](#)) to the federal expenditure prohibition. For more information regarding exceptions, refer to Section 5 below.

## 2.2 Paths to Compliance

To document compliance with the CBRA, the proposed project must fall within one of the following categories, or paths.

- **Essential Link Exception Determination** (Section 5.1)
- **CBRA Consistent Exception Determination** (Section 5.2)

Projects located in a system unit that do not meet the exception criteria, including consistency with the purposes of the act when applicable, cannot be processed with federal funding.

## 3.0 Procedural Requirements

The procedural requirements outlined below were developed by TxDOT to document compliance with the CBRA. However, not every step will be required for every project. For example, if the project is not federally funded, then only Step One is necessary. Refer to Figure 1 for a graphic representation of the process.

**Step One** – Determine if the project is federally funded. If not, the CBRA does not apply, and no documentation is required.

**Step Two** – If the project is federally funded, determine whether the project is within a system unit. If the project area is in a coastal county but outside the system unit boundaries, or within an otherwise protected area (OPA) with a “P” designation, the CBRA does not apply, and no documentation is required.

**Step Three** – Compare the project description to the exceptions listed in [16 USC 3505\(a\)\(3\)](#) to determine if project activities qualify for an exception because the project is an essential link. If the project qualifies, proceed to Step Five.

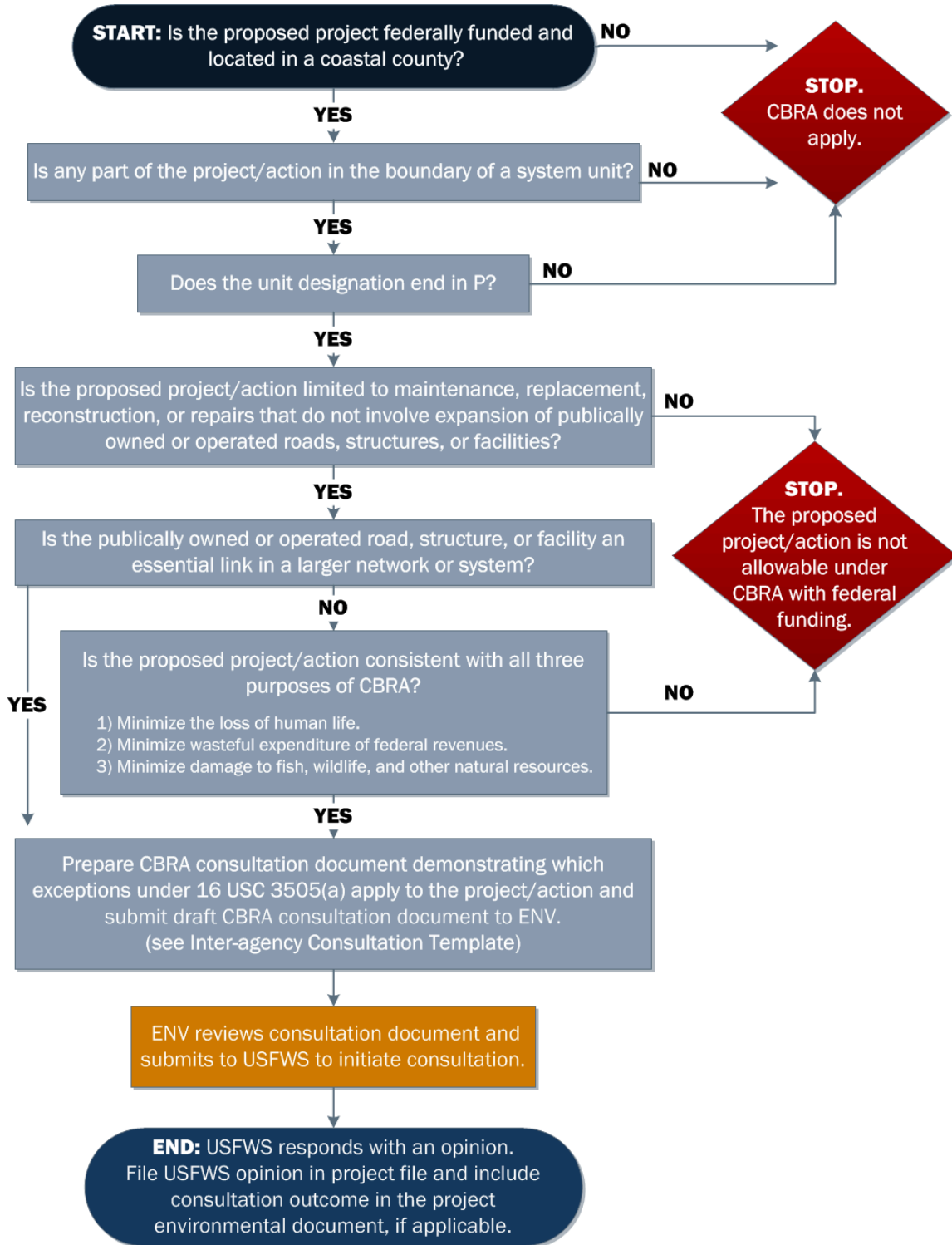
**Step Four** – Compare the project description to the exceptions listed in [16 USC 3505\(a\)\(6\)\(F\)](#) to determine if project activities qualify for an exception and the project is consistent with the purposes of the CBRA ([16 USC 3501\(b\)](#)).

**Step Five** – If the project qualifies as an exception, prepare written documentation using the [Inter-agency CBRA Consultation Template](#) to support the determination that the project qualifies for the exception. If the project does not qualify as an exemption, the project activities are not eligible for federal funding under the CBRA.

**Step Six** – Submit the completed draft consultation request using the [Inter-agency Consultation Template](#) to TxDOT ENV. TxDOT ENV is available to assist in the determination and to ensure appropriate documentation is included in the USFWS consultation submission. TxDOT ENV is responsible for

initiating consultation with USFWS. USFWS concurrence is required and must be documented. For more details on this consultation, refer to the Agency Coordination Section (Section 6).

**Figure 1  
CBRA Compliance Process**



## **4.0 Coastal Barrier Resources System (CBRS)**

The CBRA only applies to those projects located within the boundaries of the CBRS, which are limited to portions of the following counties in Texas.

<b>Counties within the CBRS Boundaries</b>		
Jefferson	Aransas	Kenedy
Chambers	Nueces	Willacy
Galveston	Matagorda	Cameron
Brazoria	Kleberg	Calhoun

If the proposed project falls within one of the counties listed above, closely consult the CBRS maps to determine whether the project is proposed for a location within the boundaries of a system unit. USFWS maintains an [Interactive CBRS Mapper](#), which may be used for preliminary mapping. USFWS also maintains the official CBRS [map for Texas](#), which is not interactive.

## **5.0 Exceptions**

Once it has been determined that the location for a proposed project is within a system unit, the next step is to compare the project description to the exception criteria to determine if the project qualifies for an exception to the prohibition to use federal funding to develop an undeveloped coastal barrier resource. The CBRA exception criteria are listed in [16 USC 3505](#). The CBRA makes provisions for several exceptions for transportation that require additional consultation and the preparation of written evidence supporting the determination that an exception applies. Activities that qualify as exceptions can include maintenance, replacement, reconstruction, or repair of publicly owned or publicly operated roads, structures, or facilities. Exceptions do not apply to project activities that involve the expansion of publicly owned or publicly operated roads or structures. If the proposed project is within a system unit and does not meet the exception criteria, the proposed project is not eligible for federal funding.

### **5.1 Essential Link Exception**

Project activities excepted under [16 USC 3505\(a\)\(3\)](#) must be essential links in a larger network or system. An essential link is that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

### **5.2 CBRA Consistent Exception**

Project activities excepted under 16 USC 3505(a)(6)(F) must be consistent with the purposes of the CBRA. According to [16 USC 3501\(b\)](#), the purposes of the CBRA are to minimize the following:

- Loss of human life;
- Wasteful expenditure of federal revenues; and
- Damage to fish, wildlife, and other natural resources associated with coastal barriers.

## 6.0 Agency Coordination

The project sponsor may coordinate with USFWS for assistance in determining whether a proposed project is located within a system unit. A project sponsor may also coordinate with the USFWS for assistance with documentation and using the [Inter-agency CBRA Consultation Template](#).

Once a draft consultation request has been prepared, the project sponsor must submit the draft consultation request to TxDOT ENV. TxDOT ENV will review and submit the consultation request to USFWS initiating consultation. The USFWS will respond to a CBRA consultation request in the form of an opinion. A draft of a typical USFWS response is included in the [Inter-agency CBRA Consultation Template](#).

## 7.0 Public Participation

The CBRA requires no specific public participation.

## 8.0 Documentation

All projects require documentation of CBRA consideration in the project file. For Environmental Assessments (EA) and Environmental Impact Statements (EIS), this consideration is also documented in the body of the EA or EIS. Projects to which the CBRA applies require some or all of the following types of documentation:

- Documentation of consultation with USFWS including the request letter and the resulting USFWS opinion, and any substantial correspondence,
- Any other evidence supporting the consultation.

This documentation must be stored in the project file, and for an EA or EIS, referenced in the body of the EA or EIS.

## 9.0 Review and Approval

The department delegate evaluates compliance with CBRA during the review of the environmental document and issues approval through the NEPA process. For projects that meet the exception criteria, compliance is met by obtaining the USFWS opinion through consultation. For those projects, approval cannot be granted until the procedural requirement to solicit an USFWS opinion has been satisfied. TxDOT makes the decision whether a project is eligible to receive federal funds. TxDOT must only consider the USFWS opinion in their decision.

## 10.0 Glossary

**Essential Link** – An essential link is the portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

**Otherwise Protected Area** – Otherwise Protected Areas (OPAs) are a type of unit within the Coastal Barrier Resources System (CBRS). OPAs are denoted with a “P” at the end of the unit number (e.g., “TX-04P”). The only Federal funding prohibition within OPAs is on Federal flood insurance; other Federal expenditures are permitted. Consultation with the USFWS is not necessary if the proposed action or project is located within an OPA.

**System Unit** – A system unit is any undeveloped coastal barrier or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System (CBRS).

**Undeveloped Coastal Barrier** – An undeveloped coastal barrier resource is a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that is subject to wave, tidal, and wind energies and protects landward aquatic habitats from direct wave attack. Undeveloped coastal barrier resources also include all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters, when such features and associated habitats contain few manmade structures and these structures and man's activities on such features and within such habitats do not significantly impede geomorphic and ecological processes.

## 11.0 Abbreviations and Acronyms

CBRA	Coastal Barrier Resources Act of 1982
CBRS	Coastal Barrier Resources System
EA	Environmental Assessment
EIS	Environmental Impact Statement
ENV	Environmental Affairs Division of TxDOT
FHWA	Federal Highway Administration
NEPA	National Environmental Policy Act
OPA	Otherwise Protected Area
TxDOT	Texas Department of Transportation
USC	United States Code
USFWS	United States Fish and Wildlife Service



## **Appendix A: Revision History**

The following table shows the revision history for this handbook.

<b>Revision History</b>	
<b>Effective Date Month, Year</b>	<b>Reason for and Description of Change</b>
July 2018	Version 3 was released This version addresses the February 2018 updates from USFWS on CBRA consultations, including the use of the Inter-agency Consultation Template. The document was updated to reflect changed documentation requirements based on changes to ECOS, and removed the Biological Evaluation Form as a documentation requirement. All external links were updated.
July 2015	Version 2 was released. Revisions were made based on the responsibilities assigned to TxDOT as part of FHWA assignment. TxDOT assumes the responsibility for compliance with the CBRA, as the lead federal agency. Revisions also corrected a procedural error and included the Biological Evaluation Form as a documentation requirement.
April 2014	Version 1 was released.