



**TO:** STEVE SMITH  
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

**FROM:** MIKE MCINTYRE

**SUBJECT:** JULY/AUGUST MONTHLY LEGISLATIVE UPDATE

**DATE:** AUGUST 24, 2017

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## MONTHLY LEGISLATIVE UPDATE

The House and Senate are both in recess until Tuesday, September 5. Both chambers are scheduled to hold two "pro forma" sessions each week on Tuesdays and Fridays for the remainder of the recess with no formal business being conducted. The Senate chose to hold pro forma sessions in order to prevent President Trump from making recess appointments during August. After the recess, the House and Senate only have 12 and 17 working days, respectively, to complete action on a number of items that require action by the end of the month, including FY 2018 appropriations, raising the debt ceiling, approving an FY 2018 budget resolution, and reauthorizing the National Flood Insurance Program (NFIP), among others.

### **FY 2018 Appropriations**

A flurry of activity on FY 2018 appropriations occurred throughout July and August. The House Appropriations Committee approved all 12 appropriations bills by mid-July and the Senate Appropriations Committee approved six by the end of July. On July 27, the full House passed a \$788 billion FY 2018 "minibus" appropriations package ([H.R. 3219](#)) that includes four of the 12 appropriations bills: the Defense, Energy and Water Development, Legislative Branch, and Military Construction-Veterans Affairs bills. The package passed by a near party-line vote of 235-192 with only five members from each party defecting. The Senate has yet to consider any appropriations bills on the floor.

After returning from the August recess, the House plans to bundle the eight remaining appropriations bills and eventually tie those bills to the four-bill package passed on July 27 to create one larger omnibus package. House Budget Committee Ranking Member John Yarmuth (D-KY) said he anticipates the House will ultimately look to package all 12 spending bills together, along with a measure extending the debt ceiling. The House budget resolution is expected to be considered later in the month.

The House's spending bills are likely to face challenges in the Senate, where leaders will need the support of some Democrats to pass appropriations measures. Another major issue is that the House's top-line defense spending numbers exceed the budget cap agreed to in the 2011 Budget Control Act, which will create challenges for appropriators in September. "The numbers clearly challenge the Budget Control Act and we have to at some point resolve that fundamental starting point before we can do our work on the appropriations," Senate Minority Whip Dick Durbin (D-IL) said. Democrats have said they would support busting the defense spending limits only if there were increases in non-defense domestic spending.

Overall, it is unlikely that Congress will be able to pass all FY 2018 appropriations bills by the September 30 deadline. Congress will likely pass a short-term continuing resolution through December (at least) to avoid a government shutdown.

## **National Flood Insurance Program Reauthorization**

With the National Flood Insurance Program (NFIP) set to expire on September 30, the House and Senate committees of jurisdiction have been working to put together their proposals to reauthorize the program. However, with the deadline fast approaching, it is becoming increasingly likely that a short-term extension of the program will be needed. No official indications have been provided as to how long this extension could be but reports suggest that the extension could be anywhere from a few weeks to two years.

In the House, the Financial Services Committee approved a series of seven bills it plans to package into one proposal to consider on the House floor ([H.R. 2868](#), [H.R. 2875](#), and [H.R. 2874](#)). However, in a July 14 letter, 26 House Republicans told Republican leadership that they would not support the package approved by the Financial Services Committee if it came to the floor. The letter said that the package "will make flood insurance unaffordable for our constituents, will stall development and construction and increase exposure to the federal Treasury." Much of this pushback was due to provisions in the bill that would phase out NFIP coverage for new construction in the floodplain and would restrict grandfathering protections. Financial Services Chairman Jeb Hensarling (R-TX) later agreed to make changes to the package to drop the new construction provision and revise the grandfathering proposal. However, there are still concerns with the House package and its treatment of multiple loss properties with regards to grandfathering and pre-FIRM subsidies, as well as its proposed elimination of NFIP coverage for certain multiple loss properties and its increase in the annual premium increase floor from 5 percent to 6.5 percent.

In the Senate, three NFIP reauthorization bills have been introduced. The Senate Banking, Housing and Urban Affairs Committee has yet to formally consider or markup any bills. On July, 17, the Senate Banking Committee Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) introduced a bill ([S. 1571](#)) that would reauthorize the National Flood Insurance Program (NFIP) for six years. According to a Committee statement, the bill "includes many important reforms, including in the areas of risk mitigation, mapping and program improvements." The sponsors also said that this bill will serve as "base text," and that they "look forward to working with our colleagues to address outstanding issues."

Notably, the bill does not include core provisions from a House proposal that would open the flood insurance market to the private sector. However, it does include some similar provisions related to mapping, program improvements and repetitive loss properties. For example, the bill includes a provision requiring NFIP communities that have a certain number of repetitive loss structures to identify areas with repetitive loss structures and assess ongoing risks, and develop and implement a community-specific plan for mitigating these areas.

S. 1571 is now the third NFIP reauthorization bill introduced in the Senate. On June 7, Senators Kirsten Gillibrand (D-NY), Bill Cassidy (R-LA) and Shelley Moore Capito (R-WV) introduced [S. 1313](#), the "Flood Insurance Affordability and Sustainability Act," a 10-year reauthorization of the NFIP. On June 13, Senators Bob Menendez (D-NJ), Cory Booker (D-NJ), John Kennedy (R-LA), Chris Van Hollen (D-MD), Marco Rubio (R-FL), Bill Nelson (D-FL) Elizabeth Warren (D-MA) and Thad Cochran (R-MS) introduced [S. 1368](#), "The Sustainable, Affordable, Fair, and Efficient (SAFE) National Flood Insurance Program Reauthorization Act of 2017."

## **EPA and Corps Seeks Public Comments on Clean Water Rule Repeal**

On July 27, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published their [proposed rule](#) to repeal the Obama-era Clean Water Rule, also known as the

“waters of the United States” (WOTUS) rule. Public comments are being accepted through August 28, 2017.

Repeal of the Clean Water Rule is the first step in a two-step process to rescind and rewrite the rule. Step two is to propose a new rule consistent with Supreme Court Justice Antonin Scalia’s opinion in the *Rapanos* case. A February 28 Executive Order signed by President Trump directs EPA and the Corps to consider interpreting the term “navigable waters” consistent with Justice Scalia’s opinion in *Rapanos*, which specifies that Clean Water Act (CWA) jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters. In contrast, when the Obama Administration crafted its WOTUS rule, they used the *Rapanos* opinion of Justice Anthony Kennedy, which pointed to a “significant nexus” test for wetland connections to navigable waters under the CWA, thereby broadening the definition.

According to the Trump Administration’s first Unified Agenda, which outlines the Administration’s plans for regulatory action over the next year, the Administration plans to propose a new WOTUS rule by December 2017. We do not anticipate seeing any proposed language for the Administration’s new WOTUS rule before that date.

## UPDATE ON TISPC FEDERAL LOBBYING PRIORITIES

The current status of and/or the strategy to address each item is outlined below. Please note that these items are scheduled for discussion at our upcoming meetings on behalf of TISPC in Washington on September 12 and 13:

### **1. North Topsail Beach – Continue to facilitate changes to the CRBA maps**

We are pleased to report that on August 3, Senators Burr and Tillis introduced legislation that would accept the final recommended maps proposed by the U.S. Fish and Wildlife Service and amend the maps to exclude from CBRS those areas of North Topsail Beach serviced by a full complement of infrastructure, which existed prior to 1982. The Government Publishing Office has yet to officially publish the final text of the bill, which was assigned the bill number [S. 1745](#). Once the text is published and received by the Library of Congress, the bill will be available for viewing on [www.congress.gov](http://www.congress.gov). We will continue to work with both Senate offices to develop a strategy to move the bill through the Fisheries, Water and Wildlife Subcommittee and the full Environment and Public Works Committee.

We have been in regular contact with Representatives Jones and Rouzer regarding the introduction of the Senate language in the House. Since Representative Rouzer does not represent North Topsail Beach, Representative Jones’ office is taking the lead on reviewing the Senate bill and determining how best to proceed in the House. We will update TISPC as the situation in the House progresses.

*[For your reference, attached is a draft copy of the language that was introduced in the Senate.]*

### **2. Topsail Beach – Obtain waivers for use of sand from inlet CRBA area for beach nourishment**

We have been in contact with your congressional delegation regarding a potential legislative fix to this issue. Due to his position on the House Transportation and Infrastructure Committee Subcommittee on Water Resources and Environment, Representative Rouzer has taken the lead on working with relevant committee and subcommittee staff to review and finalize draft legislative language we presented to Representative Rouzer and the rest of Topsail Island’s congressional delegation. As we previously reported, Topsail Island’s congressional delegation responded positively to our request to resolve the

issue legislatively; therefore, we expect that once language is approved by the relevant committees and subcommittees in the House, that language can be used and considered in the Senate.

We will continue to be in contact with your congressional delegation on this issue and will update TISPC as the situation progresses.

**3. Island Wide – Obtain federal funding for approved federal beach nourishment projects (Surf City/North Topsail Beach & Topsail Beach).**

As we previously reported, Representatives Jones and Rouzer sent a joint letter at our request to the Corps on April 28 expressing support for both projects in FY 2017, and Senators Burr and Tillis sent a similar joint letter to the Corps on May 24. After learning the Topsail Island Projects were not ultimately included in the Corps' FY 2017 Work Plan, we immediately proceeded with plans to request their inclusion in the FY 2018 Work Plan. We are pleased to report that Representatives Jones and Rouzer sent another joint letter to the Corps on June 21 expressing their support for both projects in FY 2018. The Senate offices have agreed to send another letter to the Corps as well; however, given the timing of FY 2018 appropriations and the Work Plan process, they agreed to send the letter sometime before the end of August. We continue to follow up on this request and will report to TISPC once the letter is officially sent to the Corps.

In addition, Representatives Jones and Rouzer sent a joint letter to the House Appropriations Committee Subcommittee on Energy and Water Development urging them to, at a minimum, maintain FY 2017 funding levels for the Corps' Flood and Storm Damage Reduction Shoreline Protection account as well as to include language directing the Corps to fund at least one new construction start under the Corps' Flood and Storm Damage Reduction Shoreline Protection. A similar letter was not submitted in the Senate; however, we discussed this issue directly with staff from the Senate Appropriations Committee Subcommittee on Energy and Water Development. We are pleased to report that the Senate Appropriations Committee included language in its FY 2018 Energy and Water Development report recommending that one of the five new construction starts for FY 2018 be for a coastal storm damage reduction project. Similar language was not included in the House bill. The House is recommending only two new construction starts in FY 2018; however, this number will likely increase after negotiations with the Senate.

*[For your reference, attached are copies of the two joint letters sent by Representatives Jones and Rouzer.]*