



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

**FROM:** MIKE McINTYRE

**SUBJECT:** MAY MONTHLY LEGISLATIVE UPDATE

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The May Monthly Legislative Update provides information on the following topics:

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## WASHINGTON NEWS

### Budget and Appropriations

Despite the complexities caused by COVID-19, Congress is proceeding with work on FY 2021 appropriations. Several House Appropriations Committee subcommittees are currently in the process of preparing the first drafts of their FY 2021 appropriations bills, and the Senate plans to consider most of their FY 2021 appropriations bills by the end of June. As a result, we expect hearings and markups to be scheduled over the next several weeks.

It is still unclear how funding levels in FY 2021 appropriations bills may be impacted the COVID-19 emergency, especially because budgetary spending caps are already place. More clarity on this will come over the next few weeks as bill text is released.

### House Unveils its Next COVID-19 Package, Senate Not Ready to Take Next Step

Some lawmakers in Congress are starting to turn their attention towards a fourth coronavirus response package.

On May 12, House Democratic leadership released the 1,815-page text of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800), a \$3 trillion package to respond to the coronavirus. The House approved the HEROES Act on Friday, May 15 on a mainly party-line vote.

Of particular note, the HEROES Act proposes to create a new [State and Local Coronavirus Relief Fund](#) similar to the CARES Act's \$150 billion Coronavirus Relief Fund that provided direct funding to localities with populations over 500,000 and states/territories/tribal governments. However, this new fund

would provide direct funding to more localities, including Topsail Island communities (Speaker Pelosi's office created a [spreadsheet](#) of the estimated direct funding allocations). Within 30 days of enactment of the Act, Topsail Beach would receive an *estimated* direct allocation of \$140,540; Surf City \$795,514; and North Topsail Beach \$243,229. One year after enactment of the Act, Topsail Beach would receive another *estimated* direct allocation of \$70,270; Surf City \$397,757; and North Topsail Beach \$121,615. This funding would not require a local cost share and could be used for response and recovery efforts and to cover lost revenue. The HEROES Act would also allow local governments to be eligible to receive payroll tax credits to cover the costs of providing the paid sick and paid family leave programs mandated by the FFCRA. In addition, the legislation also proposes to provide hundreds of billions in additional emergency supplemental appropriations for existing federal programs, the vast majority of which local governments and public entities would be eligible to receive funding.

Over the past several weeks, Majority Leader Mitch McConnell and the Trump Administration have expressed objections to taking up another coronavirus relief package right now, saying there has not been enough time since the \$2 trillion CARES Act was enacted on March 27 to determine whether new legislation is needed or necessary. If Senate Republicans eventually agree to develop a fourth coronavirus response package, the legislation is expected to be substantially different from the HEROES Act. It is currently unclear when Senate Republicans will make the decision regarding if/when another package is needed.

### Corps to Update its Benefits Calculations

In April, the Assistant Secretary of the Army (ASA) for Civil Works, R.D. James, sent an internal [memo](#) to the Commanding General of the U.S. Army Corps of Engineers, Todd T. Semonite, directing the Corps to update how the agency calculates benefits in determining feasibility of Corps projects. The memo states that "Failure to identify and evaluate all project benefits of Civil Works projects understates the value of such investments and creates challenges for the public, decision makers within the Administration, Congress, as well as federal and non-federal partners in understanding the outputs of potential plans. The lack of consideration of all benefits has become apparent which raises concern that investments decisions for Civil Works projects are incomplete, leading to suboptimal investment decisions."

Under current guidance, only the National Economic Development (NED) account and Environmental Quality (EQ) account are considered mandatory for feasibility studies, whereas the Regional Economic Development (RED) account and Other Social Effects (OSE) account are considered discretionary when making calculations. However, under this new directive, the Corps must "identify, analyze and maximize all benefits in the NED, RED, and OSE." (The EQ account will be addressed separately through compliance with the National Environmental Policy Act through the procedures outlined in ER 200-2-2.)

This means that OSE benefits such as urban and community impacts; life, health, and safety factors; displacement; long-term productivity; energy requirements; and energy conservation must be provided full consideration. In addition, potential impacts to the localized or regional economy (RED benefits), not just the national economy, must be provided full consideration. (The OSE and RED accounts and explained in detail in the 1983 [Principles and Guidelines](#) guidance document.)

Overall, this new directive is a positive step toward improving how the Corps calculates its benefit cost analyses. American Shore and Beach Preservation Association Executive Director Derek Brockbank described the impact as follows: “For years ASBPA has asked the Corps to calculate a broader range of benefits for coastal projects. We believe that beach and dune systems that provide multiple benefits — recreation, ecological value, regional economic value and social value — in addition to their primary purpose of flood/coastal storm risk reduction would better compete against other USACE projects that lack the range of benefits. At the very least we believe identifying the full range of benefits would provide decision-makers with better information. We have not had much success in getting USACE to make this change and so we believe this could be a good step in improving the BCA process.”

### Senate Committee Approves 2020 Water Resources Development Act Legislation

On May 6, 2020, the Senate Environment and Public Works (EPW) Committee approved the *America’s Water Infrastructure Act* (AWIA) of 2020 (S. 3591) and the *Drinking Water Infrastructure Act* (DWIA) of 2020 (S. 3590); both packages combined are also being referred to as the 2020 Water Resources Development Act (WRDA). The bills, first unveiled by EPW Committee Chairman John Barrasso (R-WY) and Ranking Member Tom Carper (D-DE) on April 21, includes \$17 billion in new authorizations for U.S. Environmental Protection Agency and Army Corps of Engineers projects and programs.

Below are several provisions in the Corps-related sections of the legislation that will be of interest to TISPC:

- **Sec.1019.Sediment management plan.**  
This section requires that within one year of enactment of this Act, the District Commander of each Corps District that carries out any dredging activity for navigation or other water resources development project purposes develop, at full federal expense, a five-year sediment management plan for submission to the Secretary. A District Commander must provide notice and an opportunity for public comment, as well as make the plans or revisions publicly available
- **Sec.1012.Thin layer placement pilot program.**  
This section increases the number of authorized projects under the beneficial use of dredged material pilot program from 20 to 40 projects, and requires that ten of those projects use thin layer placement of dredged fine and coarse grain sediment for the maintenance and restoration of wetlands
- **Sec.1028.Coastal storm damage reduction contracts.**  
This section mandates that the Corps seek input from the community or communities where a coastal storm damage reduction project is located to minimize, to the maximum extent practicable, the impact to the local economy due to the timing of the project activities
- **Sec.1053.Establishing permanent features from emergency response measures.**  
This section requires the Corps, at the request of an impacted community, to evaluate whether a temporary structure that was constructed by the Corps in response to a natural disaster be considered to become a permanent feature.
- **Sec.1080.Disposal of dredged materials.**  
This section requires the Corps, within 180 days of enactment of this Act, to amend parts 335 through 338 of title 33, Code of Federal Regulations, to ensure that, when evaluating the

placement of dredged materials from operation and maintenance of water resources development projects, the Corps shall consider the suitability of the material to be dredged for a full range of beneficial uses including the economic and environmental benefits and impacts.

- **Sec.1085.Maintenance dredging permits.**

This section requires that the Corps prioritize the reissuance of any regional general permit for maintenance dredging that expires prior to May 1, 2021, while also using best efforts to ensure the reissuance prior to expiration of said regional permit.

- **Sec.1045.Acceptance of funds for harbor dredging.**

This section allows the Corps to accept and expend funds contributed by a state or other non-federal interest to dredge a non-federal harbor or channel or to provide technical assistance related to the planning and design of dredging activities in a non-federal harbor or channel.

- **Sec.1048.Replacement capacity.**

The section amends section 217(a) of the WRDA 1996 (33 U.S.C. 2326a(a)) to allow the Corps to approve the use of federal dredge disposal facilities for non-federal construction of navigation improvements pursuant to section 204(f) of WRDA 1986 (33 U.S.C. 2232(f)). If the Corps determines that replacement capacity is necessary for federal project purposes and can be constructed at an alternative dredge disposal facility, the non-federal interest shall be responsible for the costs to construct the replacement capacity, but not until the capacity is needed for federal project purposes. Additional costs or credits may be attributable to the non-federal interest depending upon the proposed site for the replacement capacity of the dredge material. The section also stipulates that the Corps may not reject a replacement capacity location unless it is determined that the site is environmentally unacceptable or technically unsound.

- **Sec.1055.Subsurface drain systems research and development.**

This section mandates that the Corps, acting through the Director of the Engineer Research and Development Center, carry out research and development activities relating to the use of subsurface drain systems as a flood risk-reduction measure and a coastal storm risk-reduction measure.

- **Sec.1072.South Atlantic Coastal Study.**

This section requires the Corps to provide Congress with an annual briefing and report on the South Atlantic Coastal Study.

- **Sec.1095.Selection of dredged material disposal method for certain purposes.**

This section amends section 204 of WRDA 1992 (33 U.S.C. 2326) to allow the Corps to evaluate the most beneficial use of dredged material from a project rather than disposing of it in the least cost option.

- **Sec.1101.Flexibility for projects.**

This section establishes a two-year goal for the completion of Corps feasibility studies.

The House Transportation and Infrastructure (T&I) Committee is preparing to introduce the House version of the 2020 WRDA legislation by Memorial Day with plans to approve it this summer, according to committee aides.

## ADVOCACY UPDATE

Senators returned to Washington the week of May 4 after several weeks of unplanned recess due to the coronavirus. The House finally returned to Washington on Friday, May 15 in order to pass its version of a fourth coronavirus response package (more on this in the “Washington News” section of the report). On May 15, the House also approved a resolution to let members cast proxy votes for absent colleagues on the House floor and to allow virtual committee hearings and markups for as long as the coronavirus pandemic continues. Though work on Capitol Hill is steadily increasing, public access to the Capitol Hill complex remains restricted until further notice.

We continue to advocate for direct payments to local governments to help with response and recovery efforts at the local level. Some strong progress is being made on this initiative, especially as more Republican lawmakers begin publicly expressing support for providing direct aid to smaller localities. Congressman Rouzer, for example, joined 18 of his House Republican colleagues in a [letter](#) to President Trump requesting that the President, in future negotiations on coronavirus recovery legislation, push for inclusion of aid to more local governments and “incorporate retroactive relief to assist these struggling smaller communities offset unforeseen COVID-19 related expenses.” Many lawmakers are also expressing support for allowing any current and future direct aid to state and local governments to be used to cover lost revenue (currently lost revenue is not considered an allowable expense for this aid). In addition, the fourth coronavirus response package proposal introduced by the House, the HEROES Act, would provide direct payments to local governments, including all three Topsail Island communities (more on this in the “Washington News” section of the report). These developments give us optimism that future coronavirus response legislation will finally include direct aid to smaller localities like Topsail Beach, Surf City, and North Topsail Beach.

Also, as you know, local governments are required to provide the benefits of both the Emergency Paid Sick Leave and Family and Medical Leave Programs mandated by the Families First Coronavirus Response Act (FFCRA) to their employees. However, local governments are currently not eligible to receive the reimbursable tax credits some private sector employers receive from the federal government to offset the costs of implementing these paid leave programs. Progress is being made on this issue as well. Legislative proposals such as the HEROES Act would make local governments eligible to receive these tax credits.

In addition, for your reference, TFG has created several webpages on our website specifically focused on providing coronavirus-related resources to local governments and public agencies. TFG has created a [Coronavirus Update Library](#), [Federal Guidance Resources Webpage](#), and [Small Business Resources Webpage](#) to store TFG memos and briefs on the federal coronavirus response, as well as critical information and guidance released by Congress and the Administration. You can also [sign up](#) for TFG’s Coronavirus Update, which is sent twice a week on Mondays and Thursdays. If you have any question about information provided on these webpages or in the Coronavirus Update, please let us know!

### Topsail Beach Sand Borrowing Issue

We have been in contact with TISPC's congressional delegation regarding the additional compliance requirements Topsail Beach was asked to meet in order to proceed with a Hurricane Dorian-related beach renourishment project that proposed to use sand from within the CBRS. As of early May, the delegation had not been made aware of such measures being required in other communities; however, this is not an indication that additional requirements are not being instituted elsewhere. They appreciated that we brought this to their attention so they can monitor the situation if it occurs in other communities.

As you are well aware, the 2019 update to the U.S. Department of the Interior's interpretation of the CBRA now allows for sand removal from CBRS units to be used to renourish beaches located both within and outside the CBRS, so long as the proposed project is consistent with the purposes of the Act (to minimize loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources) and meets the statutory exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems," which includes beach renourishment. Agencies such as FEMA are likely trying to ensure they are in compliance with this new interpretation of the CBRA. However, the Biological Opinion issued by the U.S. Fish and Wildlife Service for this project already sets a high threshold for environmental compliance, and any additional requirements requested by FEMA should be justified thoroughly by the agency.

### North Topsail Beach CBRA Mapping Issue

We are closely monitoring the legislative landscape that is taking shape in response to the coronavirus pandemic to identify potential legislative vehicles to advance the North Topsail Beach CBRA mapping bill. As you can imagine, the situation now is very different than it was prior to the coronavirus pandemic. Even though the situation continues to change on a near daily basis, we will again be speaking with your congressional delegation in the coming weeks to reevaluate the situation and determine which options are most viable to pursue.

### Topsail Beach Flood Mapping Issue

We would like to schedule a phone conference with relevant Topsail Island officials/staff and TI Coastal, who collected the information submitted to FEMA during the map appeal process, to discuss issues that remain with the proposed FIRMs for panels 4204 and 4212 and discuss next steps. Stephanie Missert with TFG will contact Topsail Beach to schedule this call after the Memorial Day holiday.