



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE McINTYRE

SUBJECT: JULY/AUGUST MONTHLY LEGISLATIVE UPDATE

DATE: AUGUST 19, 2021

The July/August Monthly Legislative Update provides information on the following topics:

- Washington News
 - U.S. Fish and Wildlife Service Proposes Critical Habitat for Rufa Red Knot
 - Senate Approves Bipartisan Infrastructure Package
 - Top Army Corps Pick Advances in Nomination Process
 - Biden Administration Extends 100% Federal Cost-Share for Category B COVID-19 Emergency Protective Measures
 - FEMA Opens 2021 Round of Building Resilient Infrastructures and Communities (BRIC) Funding
- Advocacy Update

WASHINGTON NEWS

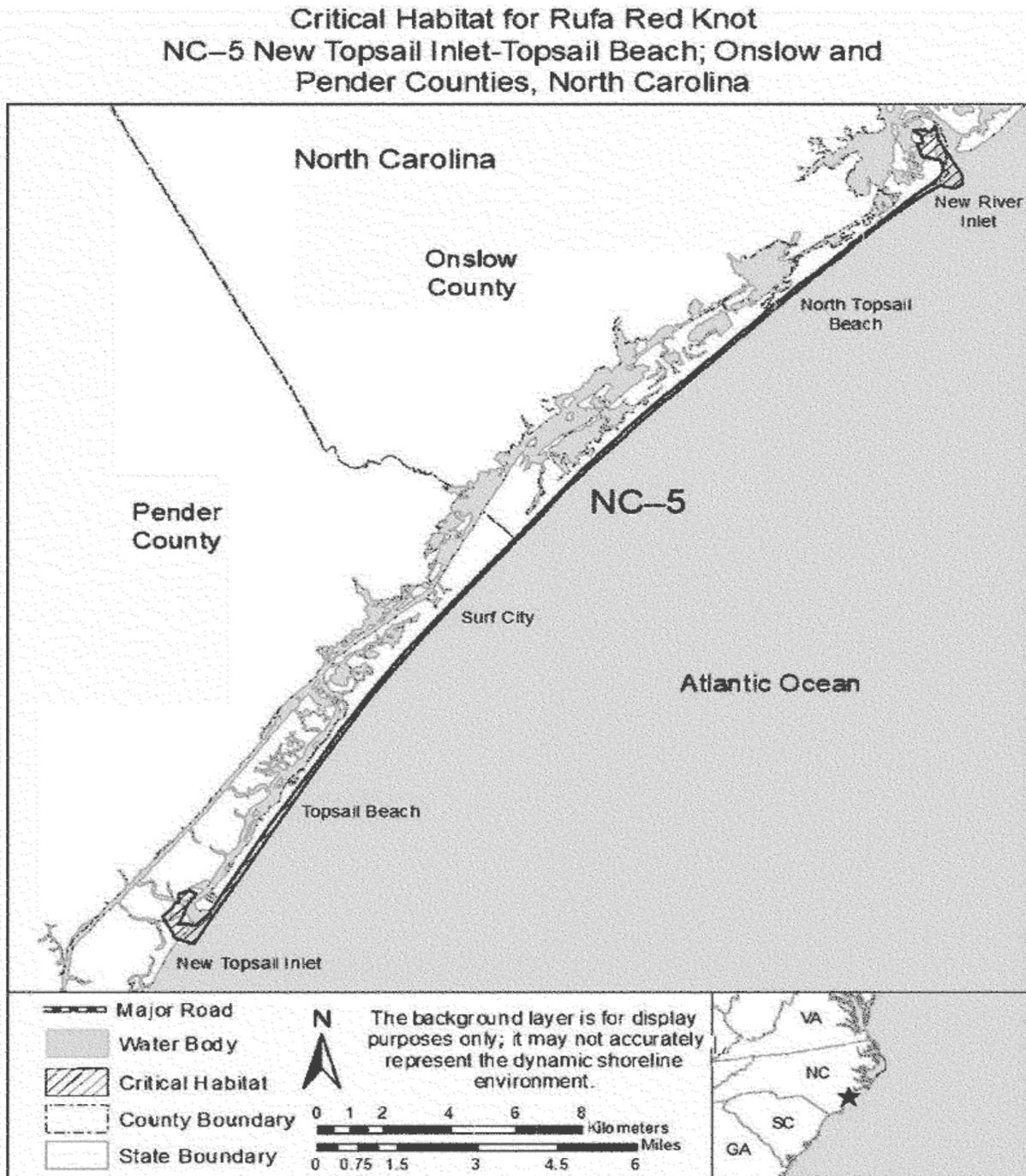
[U.S. Fish and Wildlife Service Proposes Critical Habitat for Rufa Red Knot](#)

On July 15, the U.S. Fish and Wildlife Service (FWS) published a [proposed rule](#) to designate critical habitat for the federally threatened rufa red knot (*Calidris canutus rufa*) under the Endangered Species Act of 1973 (ESA). In total, approximately 649,066 acres are proposed in 120 units (18 of which are further subdivided into 46 subunits) in Massachusetts, New York, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. The proposed designation impacts portions of 61 counties/parishes in these states. FWS will accept comments on [regulations.gov](https://www.regulations.gov) ([Docket: FWS-R5-ES-2021-0032](#)) through September 13, 2021, unless there is an extension of the public comment period.

One of the units included in the proposed rule is “Unit NC-5: New Topsail Inlet-Topsail Beach.” The proposed critical habitat designation in Unit NC-5 includes 1,612 acres of shoreline habitat that stretches about 23 miles from the west side of the New River Inlet channel west to the east side of the New Topsail Inlet channel.

Below is the graphic included in the proposed rule that depicts the proposed critical habitat on Topsail Island, as well the language included in the proposed rule that references Topsail Island.

Please note that we will continue to speak directly with Chairman Smith regarding TISPC’s response to the proposed rule.



Source: Endangered and Threatened Wildlife and Plants: Designation of Critical Habitat for Rufa Red Knot (*Calidris canutus rufa*), 86 Fed. Reg. 37410 (proposed July 15, 2021) (to be codified at 50 C.F.R 17).

“Unit NC-5: New Topsail Inlet-Topsail Beach

Unit NC-5 consists of 1,612 ac (652 ha) of barrier island in Onslow and Pender Counties, North Carolina, stretching about 23 mi (37 km) from the west side of the New River Inlet channel west to the east side of the New Topsail Inlet channel. This unit includes from MLLW to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the New River Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the New Topsail Inlet channel. All lands within this unit are in private/other ownership. General land use within this unit includes beach access for seasonal rental and residential communities, recreational day uses (e.g., sunbathing, walking, bird watching, swimming, surfing, surf fishing, and photography), commercial fishing, and natural resource conservation and open space.

Unit NC-5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 121 ac (49 ha) of this unit overlap designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and approximately 972 ac (393 ha) overlap with designated habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit NC-5 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (e.g., pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; (4) modification or loss of habitat or both due to residential and commercial development; and (5) response to natural and human-caused disasters (i.e., hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (e.g., living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Topsail Sound (see Special Management Considerations or Protection, above).”

Senate Approves Bipartisan Infrastructure Package

On August 10, the Senate passed the 2,702-page, five-year [Infrastructure Investment and Jobs Act](#), which includes a full surface transportation reauthorization bill, in addition to funding for the electric grid, broadband, water infrastructure, resiliency and western water storage, environmental remediation, and more. The legislation totals around \$1.2 trillion, with roughly \$550 billion constituting new federal spending and the rest coming from existing, planned investments in roads, highways, and bridges. The bill includes \$110 billion in new spending for roads and bridges; \$73 billion for power grid upgrades; \$66

billion for passenger and freight rail; \$65 billion for broadband expansion; \$55 billion for water infrastructure; \$50 billion for resiliency and western water storage; \$39 billion for public transit; \$25 billion for airports; \$17 billion for ports and waterways; \$15 billion for electric vehicles; \$11 billion for road safety; and \$1 billion for a new “Reconnecting Communities Pilot Program.”

Nineteen Republican Senators (including both Senators from North Carolina) joined all Democrats to pass the bipartisan infrastructure package on August 10:

Richard Burr (NC)
Thom Tillis (NC)
Roy Blunt (MO)
Shelley Moore Capito (WV)
Bill Cassidy (LA)
Susan Collins (ME)
Kevin Cramer (ND)
Mike Crapo (ID)
Deb Fischer (NE)
Lindsey Graham (SC)
Chuck Grassley (IA)
John Hoeven (ND)
Mitch McConnell (KY)
Lisa Murkowski (AK)
Rob Portman (OH)
Jim Risch (ID)
Mitt Romney (UT)
Dan Sullivan (AK)
Roger Wicker (MS)

After passage of the bill, the Senate immediately began consideration of Senate Democrats’ \$3.5 trillion [Fiscal Year \(FY\) 2022 budget resolution](#), which was publicly released on August 9. The budget resolution includes reconciliation instructions for 12 Senate committees and 13 House committees to craft sweeping legislation to “enact the Build Back Better agenda,” including large swaths of President Biden’s proposed American [Jobs](#) and [Families](#) Plans unveiled earlier this year. Major spending targets under the resolution include: universal Pre-K for 3 and 4-year olds; subsidized child care for working families; tuition-free community college; expanding Medicare benefits; providing "lawful permanent status for qualified immigrants"; improving cybersecurity infrastructure; funding to address forest fires, reduce carbon emissions and address drought concerns; Civilian Climate Corps funding; clean energy development funding; coastal resiliency and healthy oceans investments; environmental justice investments in clean water affordability and access, healthy ports and climate equity; funding to invest in public housing, the Housing Trust Fund, HOME, housing affordability, equity and community land trusts, CDBG, zoning, land use, and transit improvements; and SALT cap relief. In a letter sent on August 9, Senate Majority Leader Chuck Schumer (D-NY) informed the 50-member Senate Democratic Caucus that the deadline for committees to write legislation to fulfill the spending targets set forth by the budget resolution is

Wednesday, September 15. The multiple bills marked up by the committees would then be bundled together by the House and/or Senate Budget Committees for floor debate as a single, mammoth bill.

The House is returning to Washington on Monday, August 23 to vote on the Senate-passed FY 2022 budget resolution. House Speaker Nancy Pelosi (D-CA) has said numerous times the House will not vote on the \$1.2 trillion Senate-passed Infrastructure Investment and Jobs Act until the Senate passes the budget reconciliation package (following adoption of the FY22 budget resolution by the Senate and House). Consequently, a final House vote on the infrastructure bill will very likely not happen until sometime in October at the earliest. This means that the infrastructure bill and the budget reconciliation package will not be enacted into law until mid-late fall.

Top Army Corps Pick Advances in Nomination Process

In late July, the Senate Armed Services Committee approved the nomination of Michael Connor, a former Obama Interior official and Hill staffer, to serve as Assistant Secretary of the Army for Civil Works. The Senate Environment and Public Works Committee (EPW) must also approve Connor's nomination before the nomination can proceed to the full Senate for consideration. EPW is set to vote on Connor's nomination in mid-September.

Biden Administration Extends 100% Federal Cost-Share for Category B COVID-19 Emergency Protective Measures

On August 17, President Biden signed a [Presidential Memorandum](#) on "Maximizing Assistance to Respond to COVID-19," which directs FEMA to extend the 100 percent Federal cost-share for all eligible Category B Emergency Protective Measures incurred by local governments related to the COVID-19 pandemic. The Memorandum extends the performance deadline from September 30, 2021, to **December 31, 2021** (performance start date remains January 20, 2020.)

Eligible Category B expenses are inclusive of the supplementary expenses President Biden asked FEMA to "make available" under Category B in his January 21, 2021, [Presidential Memorandum](#) titled, "Memorandum to Extend Federal Support to Governors' Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States." This January 21 memorandum directed FEMA to make available under Category B "such assistance as may be required by States (including territories and the District of Columbia), local governments, and Tribal governments to provide for the safe opening and operation of eligible schools, child-care facilities, healthcare facilities, non-congregate shelters, domestic violence shelters, transit systems, and other eligible applicants." The January 21 memorandum also said, "Such assistance may include funding for the provision of personal protective equipment and disinfecting services and supplies."

FEMA Opens 2021 Round of Building Resilient Infrastructures and Communities (BRIC) Funding

On August 9, FEMA announced the opening of the FY 2021 Building Resilient Infrastructures and Communities (BRIC) solicitation period. BRIC provides grants to states, local communities, tribes, and territories to proactively reduce their vulnerability to natural hazard events before they occur and make themselves and the nation more resilient. This year's priorities are to:

- Incentivize natural hazard risk reduction activities that mitigate risk to public infrastructure.
- Prioritize benefits to disadvantaged communities.
- Mitigate risk to one or more [community lifelines](#).
- Incorporate [nature-based solutions](#).
- Enhance climate resilience and adaptation.
- Increase funding to applicants that facilitate the adoption and enforcement of the latest published editions of building codes.

Communities, including local governments, cities, townships, counties, special district governments, and tribal governments (including federally recognized tribes who choose to apply as sub-applicants) are considered sub-applicants and must submit sub-applications for financial assistance to their state/territory/tribal applicant agency (the North Carolina Department of Public Safety (NCDPS)).

A total of \$1 billion is available to support awards through this program. Of the total award amount, funding will be allocated as follows:

- State/territory allocation: a total of \$56 million is available to support awards of up to \$1 million.
- Tribal set-aside: a total of \$25 million is available to support awards of up to \$1 million.
- National competition: a total of \$919 million is available to support awards of up to \$50 million.

Changes for the Fiscal Year 2021 BRIC program include:

- Increases the state/territory allocation subtotal by an additional \$400,000 to \$1 million, which includes an increase to the mitigation planning and planning-related activities per applicant to \$500,000.
- Continues to incentivize the adoption of building codes based on the latest published editions of building codes.
- Includes a new priority to enhance climate resilience and adaptation.
- Includes a new priority to prioritize benefits to incentivize natural hazard risk reduction activities that mitigate risk to public infrastructure and includes disadvantaged communities as defined in [Executive Order 14008](#) – Tackling the Climate Crisis at Home and Abroad.
- Revises the title of a “Small Impoverished Community” to “Economically Disadvantaged Rural Communities.”
- Prioritizes assistance that benefits disadvantaged communities as referenced in Executive Order 14008 - Tackling the Climate Crisis at Home and Abroad, in line with the Administration’s [Justice40 Initiative](#) to promote equity.
- Revises the population impacted, outreach activities, and leveraging partners qualitative criteria to emphasize equity considerations through further assessment of vulnerable communities, a broadened range of stakeholder input and more varied partnerships.
- Doubles the number of communities to which FEMA is offering non-financial Direct Technical Assistance, from 10 to 20, to help build capability and capacity at the local level and includes disadvantaged communities.
- Partially implements the [Federal Flood Risk Management Standard](#) in other eligibility criteria as referenced in Executive Order 14030 – Climate-Related Financial Risk. (All non-critical structure elevation, dry floodproofing, and mitigation reconstruction projects in the floodplain must apply,

at a minimum, the flood elevations of the Federal Flood Risk Management Standard Freeboard Value Approach unless doing so would cause the project to be unable to meet applicable program cost-effectiveness requirements. All other types of projects may choose to apply the flood elevations of the Federal Flood Risk Management Standard's Freeboard Value Approach.)

States will have to submit their application to FEMA no later than January 28, 2022. ***Local government sub-applicants in North Carolina must submit the required Letter of Interest (LOI) to NCDPS by October 1. Other key dates in North Carolina's BRIC application process can be found on [NCDPS's BRIC webpage](#).***

ADVOCACY UPDATE

Updates on TISPC's federal priorities are outlined below.

North Topsail Beach CBRA Mapping Issue

On August 12, FWS [proposed](#) changes to seven CBRS map in North Carolina, South Carolina, and Florida, including Topsail Unit L06. FWS categorizes the changes to Topsail Unit L06 in North Topsail Beach as minor technical corrections that result from the limitations of Geographic Information Systems data (including parcels and aerial imagery) that were available in the early 2000s when the mapping work was done for the unit. The proposed change would remove approximately 2.5 acres from the CBRS, comprising four lots within Barton Bay Yacht Club, which includes two structures along Barton Bay Drive and New River Inlet Road, and a portion of one lot to the south of New River Inlet Road.

Please remember that the changes will only take effect if adopted by Congress through legislation.

The proposed updated map for Topsail Unit L06 can be found here: [Onslow Beach Complex L05 \(2 of 2\), Topsail Unit L06 \(1 of 2\) \(fws.gov\)](#).

The written explanation provided by FWS for the proposed changes can be found here: [Minor and Technical Corrections to Coastal Barrier Resources System Unit L06 \(fws.gov\)](#). (For comparison, the current effective map can be found here: [Onslow Beach Complex L05 \(2 of 2\), Topsail Unit L06 \(1 of 2\) \(fws.gov\)](#)).

A segment of the written explanation for the proposed change is as follows: “The Service was contacted in December 2020 by an interested party seeking to validate the location of a structure on Barton Bay Court in North Topsail Beach in relation to Unit L06 and determine whether the boundary in that area is accurately located based on historical CBRS maps....The Service has reviewed the area in question and found that a minor and technical correction is appropriate to address an error on one of the current effective maps for Unit L06. This error affects two existing structures, one of which was on the ground prior to its inclusion within the CBRS. The Service recommends the removal of about 2.5 acres (that were inadvertently added to the CBRS in 2015) from Unit L06....The Service recommends that Congress replace the current effective map for Unit L06, entitled “Onslow Beach Complex L05 (2 of 2) Topsail Unit L06 (1 of 2)” dated December 21, 2018, and numbered 37-023B, with a replacement map prepared by the Service and entitled “Onslow Beach Complex L05 (2 of 2) Topsail Unit L06 (1 of 2)” dated April 30, 2021, and number 37-023C. The revised map will not take effect until adopted by Congress through legislation.”

Topsail Beach Sand Borrowing Issue

On July 16, the Biden administration reversed the Trump administration's 2019 CBRA interpretation allowing entities to borrow sand within the CBRS for use outside the CBRS. The Department of the Interior and FWS will once again advise federal agencies that sand from within CBRS may not be used to nourish beaches located outside of the CBRS using federal funding under the exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization

system” (16 U.S.C. 3505(a)(6)(G)). According to the Department, the [decision](#) is based on a July 14, 2021, [legal interpretation](#) of the CBRA exception.

FWS also released an [FAQs](#) document with more information on the decision and its implementation.

In May, June, and July, we spoke with numerous stakeholders, associations, and Hill staffers about the anticipated action by the Biden administration to coordinate efforts on a response to the Department of the Interior. In particular, we work closely with NCBIWA in July on a strategy to respond to the Department. We provided feedback to NCBIWA on the content and language of the letter NCBIWA sent to Interior Secretary Deb Haaland on the issue.

Ultimately, these efforts did not dissuade the Department from reversing the 2019 policy. A Congressional inquiry has been made to the Department regarding implementation of the new policy, especially as it relates to ongoing projects. We will continue to work with the Congressional delegation and other interested stakeholders on exploring additional strategies to address the new policy. For example, as you may recall, prior to the 2019 policy change, congressional committee staff were working on a legislative compromise to resolve the issue. A similar opportunity may be possible in the next 1-2 years as Congress begins work on the Water Resources Development Act of 2022.

[Surf City and North Topsail Beach Federal Project](#)

We continue to be available to assist Surf City as their discussions continue with the Corps regarding advancement of the Surf City portion of the federal project.

[Topsail Beach Flood Mapping Issue](#)

We continue to be available to assist the Town of Topsail Beach with resolving its FEMA flood mapping issue. Topsail Beach is to keep us apprised as to the status of their efforts so we can engage the congressional delegation, as needed and as discussed. We have been in communication with Representative Rouzer’s office about an inquiry the Congressman made on this issue to FEMA at a congressional hearing on June 23.

[Greater Island-Wide Coordination in Disaster Recovery](#)

As you know, we discussed the need for greater island-wide disaster recovery coordination with your congressional delegation on June 15. We discussed this issue further with Representative Rouzer’s office on June 21. We will continue to speak with your congressional delegation about this issue in the context of disaster recovery legislation.

[Support and Promote the Community Rating System and the Federal Flood Insurance Program](#)

As you know, we discussed the Community Rating System (CRS) and the National Flood Insurance Program (NFIP) with your congressional delegation on June 15, focusing our discussion on concerns TISPC has with the new Risk Rating 2.0 pricing methodology developed by FEMA. We will continue to speak with your congressional delegation about issues related to the CRS and NFIP as the NFIP reauthorization process advances. However, please note that we expect Congress to again approve an

extension of the NFIP before September 30, as Congress has yet to agree on comprehensive NFIP reauthorization legislation. This will mark the 18th short-term extension of the program in three years.