

# 1982 Costal Barrier Resource Act

## Analysis

## Fish and Wildlife Service Unit L06 Designation (1981/1982)

As part of the Coastal Barrier Resource Act of 1982 the Service created and recommended System units for inclusion into the CBRS. The Topsail area was assigned System unit L06. We agree with the Service's assessment that technical errors were made during this process as evidence by the need for this Digital Mapping Pilot Project. North Topsail Beach was put into the System in error as it was served by a full complement of infrastructure that was not evident on the quadrangles used when the area was originally mapped.

The Service did find a full complement of infrastructure within the excluded areas of the Topsail unit but did not examine the undeveloped areas for existing infrastructure.

*Our concerns with the 1982 designation process are as follows:*

**The Service did not perform a detailed infrastructure analysis in the original mapping.**

Though a two step development criteria was published in the Federal Register, the Service only performed a limited review when evaluating L06, as the Report acknowledges "*detail assessment of the status of infrastructure was not possible, given limitations of available information and resources*".

**The Service primarily looked at aerials of visible structures when determining development.**

The Report continues "*development status was determined primarily on the basis of the density of visible structures*" from "*topographic quadrangle maps and where available, recent aerial imagery*". We disagree that aerial imagery can properly depict the presence of electrical lines or underground utilities.

**The Service did not apply the publicly published infrastructure criteria to L06.**

The CBRA development criterion (47 FR 35696) was published in *the Federal Register August 16, 1982*. Yet Topsail Island was originally mapped on December 14, 1981 and latter finalized on July 28, 1982. The infrastructure criterion seems to have been unevenly applied. We believe it would be difficult to properly map a CBRS unit prior to finalizing development guidelines.

**The Service deemed existing infrastructure "not relevant".**

While the public was not provided an infrastructure criterion during the 1981 OBRA comment period, Onslow County still presented the Service with information on existing infrastructure within West Onslow Beach (now known as North Topsail Beach). When the county stated that it was "*operating a water system*" constructed by developers and "*has invested substantially in a wastewater treatment system*" for the area, the Service's reply was "*prior investments likewise are not relevant considerations in designating coastal barriers*". That the presence of water and wastewater facilities in a proposed System unit was not relevant is a contradiction from the Service's later published development criteria.

**The Service discounted evidence of phased development, including “600 new units”.**

On-going development was occurring on North Topsail Beach beginning with the installation of full water and wastewater systems in 1980. Over 375 new dwellings were erected from 1980 to 1982 alone as compared to only 32 in the three prior years. The county cited this on-going development by noting that beyond what was visible, an additional 600 dwellings were planned. Rather than investigating the claim, the Service stated that “*prior planning has no relevance in the designation process*”. While planning alone may not have relevance, “phase development” is certainly one of the FWS stated development criterion.

**The Service did not examine conservation status of areas in L06 properly.**

The Report states that “*in 1982, the CBRA specified that land held for conservation or recreation were not to be included within the CBRS*”. This criterion was not followed by the Service. The Task Group solely analyzed land “*held by a Government Entity*” and “*held by a Qualified Organization*”. This may have been the criteria at the time the maps were initially drawn but certainly not within the 1982 CBRA.

The conservation language in 1982 CBRA refers to areas that are “*within the boundaries of an area established under Federal, State, or local law*”; there is no language that these areas must also be owned by that public entity. North Topsail Beach has a number of both public and private properties established as conservation zones under Onslow County ordinances.

**The Service did not authorize a public comment period for the 1982 CBRA.**

Within the CBRA of 1982, congress gave the Service 180 days to make “*technical modifications to the boundaries of the system units*”. Even though the original mapping was established under outdated criteria and never modified as required by the 1981 OBRA and 1982 CBRA, the Service did not have a public comment period for the final CBRA maps.