

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0208

DEADLINE FOR RECEIPT: Friday, June 9, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout the Rule, the terms “significant adverse impact,” “adverse impact,” “adverse effect”, and “adversely affect” are used without definition or example. Please define these terms generally, and if a particular term has a different meaning based upon the context in which it used, please define the term in each context.

Also throughout the Rule, you use “submerged aquatic vegetation” instead of the acronym “SAV” that you spell out in (a)(6). Either is fine, but if you’re not going to use the acronym, you might as well delete it.

In (a)(2)(B), line 19, add the oxford comma following “statutes”.

In (a)(3), line 33, what are the “findings and goals of the Coastal Area Management Act”? G.S. 113A-102? More than that? Please specify in the Rule. Also, what public benefits are you referring to? Looking at 113A-102 it is not immediately apparent what this could mean.

In (a)(3), line 33, what does “long range” mean? Please define.

In (a)(3), line 34, what is a “reasonable” alternate site? Also what are “reasonable” means and measures?

In (a)(4), p.2, lines 5-6, the sentence “They are usually . . . stages” does not appear to meet the definition of a Rule. Consider deletion or rephrasing.

In (a)(5), line 10, how are estuarine and public trust areas “classified” by EMC? Is there another Rule or statute that governs the classification? A cross reference would be helpful to your regulated public here.

In (a)(5), line 11, add a comma following “EMC”.

In (a)(5), line 15, what is an “outstanding resource value”? Please define.

Brian Liebman
Commission Counsel

Date submitted to agency: May 26, 2023

In (a)(6), lines 18-19, the sentence “These vegetation . . . areas” does not appear to meet the definition of a Rule. Consider deletion or rephrasing.

In (b)(1)(A), line 28, how does the agency determine what the “fringe” of a wetland is? Is there some kind of objective test for this?

In (b)(1)(A), line 30, add a comma after “quality.”

In (b)(1)(A), line 30, define or delete “reasonable”.

In (b)(1)(C), line 37, please define both “significant” and “long-term”.

In (b)(1)(I), p. 3, line 15, add a comma following “channels”.

In (b)(1)(I), line 18, what do you mean by “excavation may be approved” if the criteria are met? Under what circumstances would the excavation not be approved if the criteria were otherwise met?

In (b)(1)(I)(i), line 19, what is a “water-dependent need”? Is this defined anywhere?

In (b)(1)(I)(ii), line 22, “Federal” should be in lower case.

In (b)(1)(I)(iii), line 27, is the reference to “Part (b)(1)(B)” correct? Should it not be (b)(1)(C)?

In (b)(2)(B), line 37, what “rules in this Subchapter” are you referring to? Please be specific.

In (b)(3)(B), p.4, line 24, what is a “relic disposal site”?

In (b)(3)(D), line 31, add a comma following “gates”.

In (b)(4)(B), line 37, what do you mean by “water of sufficient depth”?

In (b)(5), p.5, line 2, add a comma following “basin”.

In (b)(5)(A), line 9, eliminate the parentheses and incorporate the parenthetical into the body of the Rule.

In (b)(5)(A), line 14, how is the applicant to know what is the highest priority “deemed feasible” by the permit letting agency?

In (b)(5)(C), line 31, who determines when it is “feasible” to use a dry storage marina?

In (b)(5)(D), lines 32-33, eliminate the parentheses and incorporate the parenthetical into the body of the Rule.

Brian Liebman
Commission Counsel

Date submitted to agency: May 26, 2023

In (b)(5)(E), p.6, line 5, who “anticipate[s]” that shellfish harvest closure would result from the location of a marina?

In (b)(5)(E), line 6, the cite to the U.S. Code should be “U.S.C.” and a section symbol rather than “U.S. Code Section”.

In (b)(5)(E), line 7, eliminate the parentheses and incorporate the parenthetical into the body of the Rule.

In (b)(5)(E), line 8, who “establishe[s]” that shellfish have been regularly harvested?

In (b)(5)(E), lines 9-10, please define “suitable” in both contexts.

In (b)(5)(F), line 17, capitalize “state” if meaning the State of North Carolina.

In (b)(5)(J), line 32, what does “circulation sufficient to maintain water quality” mean?

In (b)(5)(L), p.7, line 1, eliminate the parentheses and incorporate the parenthetical into the body of the Rule.

In (b)(5)(O), what are the “applicable standards”? A cross-reference would help your regulated public.

In (b)(6)(B), line 22, what is “shaded impact”?

In (b)(6)(B), line 22, add a comma following “platforms”.

In (b)(6)(D), line 32 and in (b)(6)(E), p. 8, line 4, what is a “documented need”? Documented how, and to whom? By what standard would CRC judge whether the need is sufficient?

In (b)(6)(D), lines 33-35, I am not sure what you’re requiring with the phrase “sides extending . . . top half of the walls.” Can you explain or rephrase so this is clearer?

In (b)(6)(G)(i), I don’t understand how a pier or docking facility would “not extend[] beyond the established pier or docking facility length along the same shoreline for similar use.” Can you explain or rephrase so this is clearer? Also, please delete or define “similar”.

In (b)(6)(H), line 25, please add “for” between “foot” and “each”.

In (b)(7)(B), p.9, line 17, what are “resources”?

In (b)(7)(D)(i) and (ii), lines 26 and 30, what is “unreasonable hardship”? Is this defined anywhere?

In (b)(7)(D)(iv), lines 33-34, how is the need documented?

In (b)(8)(A), p.10, line 1, when “may” beach creation or maintenance not be allowed even if the beach is consistent with the list associated with that subpart?

In (b)(8)(A)(i), line 3, similar question as above – when may a beach not be permitted even if it is in an area where it has historically been found due to natural processes?

In (b)(8)(A)(ii), line 6, please define “pollutants”.

In (b)(8)(A)(v), line 11, what is a “significant” shellfish resource?

In (b)(8)(A)(vi), line 14, what does it mean for there to be the “potential” for filling adjacent channels, canals, or basins? How is this determined?

In (b)(8)(A)(vi), line 15, add a comma following “canals”.

In (b)(8)(C)(i), line 20, where “in this Rule” are the requirements you’re referencing? A cross reference in a rule as long as this would be helpful.

In (b)(8)(D), what State and federal water quality standards are you referencing? Please be specific.

In (b)(9)(E), p.11, line 10, what kind of “evidence” are you requiring?

In (b)(9)(G), line 13, please define “pollutant”.

In (b)(10)(A), line 16, add a comma following “structure”.

In (b)(10)(C), lines 23-24, delete the “(s)” after mooring, and simply make it “moorings”. Also, please add a comma following “disposal”.

In (b)(10)(D), line 27, “anticipated” by whom?

In (b)(10)(D), lines 32-33, please define “suitable” in both contexts.

In (b)(10)(G), p.12, line 8, what EMC standards are you referring to? Please be specific.

In (b)(10)(H), line 10, what EMC requirements are you referring to? Please be specific.

In (b)(10)(J), line 15, is there a requirement for other moorings (or other development) to have a “public sponsor”? If not, why is this subpart necessary?

In (b)(10)(N), line 26, please define “pollutants”.

In (b)(11)(C), line 36, add a comma following “right”.

In (b)(12)(A)(i), p.13, line 5, who is evaluating the biological productivity and significance of mine and borrow sites? Please consider rephrasing in the active tense.

Brian Liebman
Commission Counsel

Date submitted to agency: May 26, 2023

In (b)(12)(A)(i), line 7, what “functions” and “values” is the Rule referring to?

In (b)(12)(A)(iii), line 12, Rule .0509 is currently subject to RRC objection. Just keep this in mind should that Rule come out of the Code, this one will need to be amended.

In (b)(12)(A)(iii), line 12, define “significant”.

In (b)(12)(A)(iv), line 17, please define “significant”.

In (b)(12)(A)(vi), line 24, what does it mean to “affect” ground water, etc.?

In (b)(12)(B), line 26, when would a permit not be conditioned on the applicant taking measures to comply with the Mining Act or other rules?

In (b)(12)(C), p.14, line 6, which standards are you referring to? In a rule as long as this one, I think a specific cross-reference would be helpful to your regulated public.

In (b)(12)(E), line 10-12, why is this necessary? Doesn’t (a)(3) already say this?

In (b)(13)(A)(iv), line 20, what is a “viewshed”?

In (b)(13)(A)(vi), line 25, add a comma following “removal”.

In (b)(13)(B)(ii), line 32, please define “significant.”

In (b)(13)(B)(iii), p. 15, line 1, what is a “unique” geological feature?

In (b)(13)(B)(vi), line 10, add a comma between “routes” and “or”.

In (b)(13)(D), why is this necessary? Doesn’t (a)(3) already say this?

In your History Note, there is an objection from March 21, 1996. Please confirm whether CRC ever addressed and satisfied the objection.

In your History Note, should there be a citation to G.S. 113A-115, and 115.1?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07H .0208 is amended as published in 37:15 NCR 1036-1046 as follows:

2
3 **15A NCAC 07H .0208 USE STANDARDS**

4 (a) General Use Standards

- 5 (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and
6 public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads,
7 factories, and parking lots are examples of uses that are not water dependent. Uses that are water
8 dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging,
9 bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring
10 pilings, navigational channels, access channels and drainage ditches;
- 11 (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant
12 has complied with the following standards:
- 13 (A) The location, design, and need for development, as well as the construction activities
14 involved shall be consistent with the management objective of the Estuarine and Ocean
15 ~~System AEC (Rule .0203 of this subchapter)~~ System AEC in Rule .0203 of this Section
16 and shall be sited and designed to avoid significant adverse impacts upon the productivity
17 and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as
18 defined by the Marine Fisheries Commission, and spawning and nursery areas;
- 19 (B) Development shall comply with State and federal water and air quality rules, statutes and
20 regulations;
- 21 (C) Development shall not cause irreversible damage to documented archaeological or historic
22 resources as identified by the N.C. Department of Cultural ~~resources~~; and Natural
23 Resources;
- 24 (D) Development shall not increase siltation;
- 25 (E) Development shall not create stagnant water bodies;
- 26 (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine
27 and ocean resources; and
- 28 (G) Development shall not jeopardize the use of the waters for navigation or for other public
29 trust rights in public trust areas including estuarine waters.
- 30 (3) When the proposed development is in conflict with the general or specific use standards set forth in
31 this Rule, the CRC may approve the development if the applicant can demonstrate that the activity
32 associated with the proposed project will have public benefits as identified in the findings and goals
33 of the Coastal Area Management Act, that the public benefits outweigh the long range adverse
34 effects of the project, that there is no reasonable alternate site available for the project, and that all
35 reasonable means and measures to mitigate adverse impacts of the project have been incorporated
36 into the project design and shall be implemented at the applicant's expense. Measures taken to
37 mitigate or minimize adverse impacts shall include actions that:

- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 03R .0103;

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and

(6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;

(B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall

dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

(D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;

(E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;

(F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;

(G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;

(H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and

(I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:

(i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;

(ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and

(iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

(A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;

(B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;

- 1 (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall
2 employ soil stabilization measures to prevent entry of sediments into the adjacent water
3 bodies or coastal wetlands;
- 4 (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be
5 contained by pipe, trough, or similar device to a point waterward of emergent vegetation
6 or, where local conditions require, below normal low water or normal water level;
- 7 (E) When possible, effluent from diked disposal areas shall be returned to the area being
8 dredged;
- 9 (F) A water control structure shall be installed at the intake end of the effluent pipe;
- 10 (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis
11 with respect to dredging methods and dredged material disposal in accordance with
12 Subparagraph (a)(3) of this Rule; and
- 13 (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used
14 when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- 15 (3) Drainage Ditches
- 16 (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four
17 feet deep (from ground surface) unless the applicant shows that larger ditches are
18 necessary;
- 19 (B) Dredged material derived from the construction or maintenance of drainage ditches through
20 regularly flooded marsh shall be placed landward of these marsh areas in a manner that
21 will insure that entry of sediment into the water or marsh will not occur. Dredged material
22 derived from the construction or maintenance of drainage ditches through irregularly
23 flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas
24 include relic disposal sites;
- 25 (C) Excavation of new ditches through high ground shall take place landward of an earthen
26 plug or other methods to minimize siltation to adjacent water bodies; and
- 27 (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas,
28 productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other
29 estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of
30 freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling
31 basins, water gates and retention structures are examples of design alternatives that may be
32 used to minimize sediment introduction.
- 33 (4) Nonagricultural Drainage
- 34 (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow
35 are minimized to both surface and ground water;
- 36 (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free
37 passage of water of sufficient depth; and

1 (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.

2 (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage
3 facility constructed to accommodate more than 10 boats and providing any of the following services:
4 permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities, and repair
5 service. Excluded from this definition are boat ramp facilities allowing access only, temporary
6 docking, and none of the preceding services. Expansion of existing facilities shall comply with the
7 standards of this Subparagraph for all development other than maintenance and repair necessary to
8 maintain previous service levels. Marinas shall comply with the following standards:

9 (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging)
10 and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the
11 MFC, or wetland habitats, except for dredging necessary for access to high-ground sites.
12 The following four alternatives for siting marinas are listed in order of preference for the
13 least damaging alternative; marina projects shall be designed to have the highest of these
14 four priorities that is deemed feasible by the permit letting agency:

15 (i) an upland basin site requiring no alteration of wetland or estuarine habitat and
16 providing flushing by tidal or wind generated water circulation or basin design
17 characteristics;

18 (ii) an upland basin site requiring dredging for access when the necessary dredging
19 and operation of the marina will not result in significant adverse impacts to
20 existing fishery, shellfish, or wetland resources and the basin design shall provide
21 flushing by tidal or wind generated water circulation;

22 (iii) an open water site located outside a primary nursery area which utilizes piers or
23 docks rather than channels or canals to reach deeper water; and

24 (iv) an open water marina requiring excavation of no intertidal habitat, and no
25 dredging greater than the depth of the connecting channel.

26 (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas
27 which require dredging through primary nursery areas for access. Maintenance dredging
28 in primary nursery areas for existing marinas shall comply with the standards set out in
29 Part (b)(1)(I) of this Rule;

30 (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage
31 marinas shall be used where feasible;

32 (D) Marinas to be developed in waters subject to public trust rights (other than those created
33 by dredging upland basins or canals) for the purpose of providing docking for residential
34 developments shall be allowed no more than 27 square feet of public trust areas for every
35 one linear foot of shoreline adjacent to these public trust areas for construction of docks
36 and mooring facilities. The 27 square feet allocation does not apply to fairway areas

1 between parallel piers or any portion of the pier used only for access from land to the
2 docking spaces;

3 (E) To protect water quality in shellfishing areas, marinas shall not be located within areas
4 where shellfish harvesting for human consumption is a significant existing use or adjacent
5 to such areas if shellfish harvest closure is anticipated to result from the location of the
6 marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and
7 North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that
8 section, shellfish harvesting is a significant existing use if it can be established that shellfish
9 have been regularly harvested for human consumption since November 28, 1975 or that
10 shellfish are propagating and surviving in a biologically suitable habitat and are available
11 and suitable for harvesting for the purpose of human consumption. The Division of Coastal
12 Management shall consult with the Division of Marine Fisheries regarding the significance
13 of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that
14 have been harvested or are available for harvest in the area where harvest will be affected
15 by the development;

16 (F) Marinas shall not be located without written consent from the leaseholders or owners of
17 submerged lands that have been leased from the state or deeded by the State;

18 (G) Marina basins shall be designed to promote flushing through the following design criteria:

19 (i) the basin and channel depths shall gradually increase toward open water and shall
20 never be deeper than the waters to which they connect; and

21 (ii) when possible, an opening shall be provided at opposite ends of the basin to
22 establish flow-through circulation;

23 (H) Marinas shall be designed so that the capability of the waters to be used for navigation or
24 for other public trust rights in estuarine or public trust waters are not jeopardized while
25 allowing the applicant access to deep waters;

26 (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation
27 throughout all federally maintained channels and their boundaries as designated by the US
28 Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or
29 traffic reductions; or any other device, either physical or regulatory, that may cause a
30 federally maintained channel to be restricted;

31 (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation
32 sufficient to maintain water quality;

33 (K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this
34 Rule to accommodate disposal needs for future maintenance dredging, including the ability
35 to remove the dredged material from the marina site;

- 1 (L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200)
2 for management of stormwater runoff. Stormwater management systems shall not be
3 located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
- 4 (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and
5 listing the availability of local pump-out services;
- 6 (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting
7 will be done over dry land with collection and containment devices that prevent entry of
8 waste materials into adjacent waters;
- 9 (O) All marinas shall comply with all applicable standards for docks and piers, shoreline
10 stabilization, dredging and dredged material disposal of this Rule;
- 11 (P) All applications for marinas shall be reviewed by the Division of Coastal Management to
12 determine their potential impact to coastal resources and compliance with applicable
13 standards of this Rule. Such review shall also consider the cumulative impacts of marina
14 development in accordance with G.S. 113A-120(a)(10); and
- 15 (Q) Replacement of existing marinas to maintain previous service levels shall be allowed
16 provided that the development complies with the standards for marina development within
17 this Section.
- 18 (6) Piers and Docking Facilities.
- 19 (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted
20 only if the greater width is necessary for safe use, to improve public access, or to support
21 a water dependent use that cannot otherwise occur;
- 22 (B) The total square footage of shaded impact for ~~docks~~ docks, platforms and mooring facilities
23 (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a
24 maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water
25 slips shall not be counted in the total. Projects requiring dimensions greater than those
26 stated in this Rule shall be permitted only if the greater dimensions are necessary for safe
27 use, to improve public access, or to support a water dependent use that cannot otherwise
28 occur. Size restrictions shall not apply to marinas;
- 29 (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall
30 be elevated at least three feet above any coastal wetland substrate as measured from the
31 bottom of the decking;
- 32 (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need
33 for a larger boathouse and shall have sides extending no farther than one-half the height of
34 the walls as measured from the Normal Water Level or Normal High Water and covering
35 only the top half of the walls. Measurements of square footage shall be taken of the greatest
36 exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet
37 of shoreline, except that structural boat covers utilizing a frame-supported fabric covering

1 may be permitted on properties with less than 75 linear feet of shoreline when using
2 screened fabric for side walls. Size restrictions do not apply to marinas;

3 (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to
4 accommodate a documented need for a larger boat lift;

5 (F) Piers and docking facilities shall be single story. They may be roofed but shall not be
6 designed to allow second story use;

7 (G) Pier and docking facility length shall be limited by:

8 (i) not extending beyond the established pier or docking facility length along the
9 same shoreline for similar use. This restriction does not apply to piers 100 feet or
10 less in length unless necessary to avoid unreasonable interference with navigation
11 or other uses of the waters by the public;

12 (ii) not extending into the channel portion of the water body; and

13 (iii) not extending more than one-fourth the width of a natural water body, or human-
14 made canal or basin. Measurements to determine widths of the water body, canals,
15 or basins shall be made from the waterward edge of any coastal wetland
16 vegetation that borders the water body. The one-fourth length limitation does not
17 apply in areas where the U.S. Army Corps of Engineers, or a local government in
18 consultation with the Corps of Engineers, has established an official pier-head
19 line. The one-fourth length limitation shall not apply when the proposed pier is
20 located between longer piers or docking facilities within 200 feet of the applicant's
21 property. However, the proposed pier or docking facility shall not be longer than
22 the pier head line established by the adjacent piers or docking facilities, nor longer
23 than one-third the width of the water body.

24 (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed
25 length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of
26 length longer than 400 feet, or, if the additional length is necessary to span some
27 obstruction to navigation. Measurements to determine lengths shall be made from the
28 waterward edge of any coastal wetland vegetation that borders the water body;

29 (I) Piers and docking facilities shall not interfere with the access to any riparian property and
30 shall have a minimum setback of 15 feet between any part of the pier or docking facility
31 and the adjacent property owner's areas of riparian access. The line of division of areas of
32 riparian access shall be established by drawing a line along the channel or deep water in
33 front of the properties, then drawing a line perpendicular to the line of the channel so that
34 it intersects with the shore at the point the upland property line meets the water's edge. The
35 minimum setback provided in the rule may be waived by the written agreement of the
36 adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the
37 adjacent property is sold before construction of the pier or docking facility commences, the

1 applicant shall obtain a written agreement with the new owner waiving the minimum
2 setback and submit it to the permitting agency prior to initiating any development of the
3 pier. Application of this Rule may be aided by reference to the approved diagram in 15A
4 NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations.
5 When shoreline configuration is such that a perpendicular alignment cannot be achieved,
6 the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable
7 as determined by the Director of the Division of Coastal Management; and

8 (J) Applicants for authorization to construct a pier or docking facility shall provide notice of
9 the permit application to the owner of any part of a shellfish franchise or lease over which
10 the proposed dock or pier would extend. The applicant shall allow the lease holder the
11 opportunity to mark a navigation route from the pier to the edge of the lease.

12 (7) Bulkheads

13 (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the
14 location of normal high water or normal water level;

15 (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant
16 adverse impacts to the resources;

17 (C) Bulkhead backfill material shall be obtained from an upland source approved by the
18 Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a
19 permitted project involving excavation from a non-upland source, the material so obtained
20 may be contained behind the bulkhead;

21 (D) Bulkheads shall be permitted below normal high water or normal water level only when
22 the following standards are met:

23 (i) the property to be bulkheaded has an identifiable erosion problem, whether it
24 results from natural causes or adjacent bulkheads, or it has unusual geographic or
25 geologic features, e.g. steep grade bank, which will cause the applicant
26 unreasonable hardship under the other provisions of this Rule;

27 (ii) the bulkhead alignment extends no further below normal high water or normal
28 water level than necessary to allow recovery of the area eroded in the year prior
29 to the date of application, to align with adjacent bulkheads, or to mitigate the
30 unreasonable hardship resulting from the unusual geographic or geologic features;

31 (iii) the bulkhead alignment will not adversely impact public trust rights or the
32 property of adjacent riparian owners;

33 (iv) the need for a bulkhead below normal high water or normal water level is do-
34 cumented by the Division of Coastal Management; and

35 (v) the property to be bulkheaded is in a non-oceanfront area.

36 (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.

37 (8) Beach Nourishment

- 1 (A) Beach creation or maintenance may be allowed to enhance water related recreational
2 facilities for public, commercial, and private use consistent with the following:
- 3 (i) Beaches may be created or maintained in areas where they have historically been
4 found due to natural processes;
- 5 (ii) Material placed in the water and along the shoreline shall be clean sand and free
6 from pollutants. Grain size shall be equal to that found naturally at the site;
- 7 (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas
8 where siltation from the site would pose a threat to shellfish beds;
- 9 (iv) Material shall not be placed on any coastal wetlands or submerged aquatic
10 vegetation as defined by MFC;
- 11 (v) Material shall not be placed on any submerged bottom with significant shellfish
12 resources as identified by the Division of Marine Fisheries during the permit
13 review; and
- 14 (vi) Beach construction shall not create the potential for filling adjacent navigation
15 channels, canals or boat basins.
- 16 (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed
17 as a method of shoreline erosion control;
- 18 (C) Material from dredging projects may be used for beach nourishment if:
- 19 (i) it is first handled in a manner consistent with dredged material disposal as set forth
20 in this Rule;
- 21 (ii) it is allowed to dry prior to being placed on the beach; and
- 22 (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of
23 this Rule is removed from the disposal site for placement on the beach. Material
24 shall not be placed directly on the beach by dredge or dragline during maintenance
25 excavation.
- 26 (D) Beach construction shall comply with State and federal water quality standards;
- 27 (E) The renewal of permits for beach nourishment projects shall require an evaluation by the
28 Division of Coastal Management of any adverse impacts of the original work; and
- 29 (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment
30 only one time.
- 31 (9) Groins
- 32 (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal
33 water level unless a longer structure is justified by site specific conditions and by an
34 individual who meets any North Carolina occupational licensing requirements for the type
35 of structure being proposed and approved during the application process;
- 36 (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback
37 for rock groins shall be measured from the toe of the structure. This setback may be waived

1 by written agreement of the adjacent riparian owner(s) or when two adjoining riparian
2 owners are co-applicants. Should the adjacent property be sold before construction of the
3 groin commences, the applicant shall obtain a written agreement with the new owner
4 waiving the minimum setback and submit it to the permitting agency prior to initiating any
5 development of the groin;

6 (C) Groins shall pose no threat to navigation;

7 (D) The height of groins shall not exceed one foot above normal high water or normal water
8 level;

9 (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant
10 provides evidence that more structures are needed for shoreline stabilization.

11 (F) "L" and "T" sections shall not be allowed at the end of groins; and

12 (G) Riprap material used for groin construction shall be free from loose dirt or any other
13 pollutant and of a size sufficient to prevent its movement from the site by wave and current
14 action.

15 (10) "Freestanding Moorings".

16 (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or
17 other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling
18 as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;

19 (B) Freestanding moorings shall be permitted only:

20 (i) to riparian property owners within their riparian corridors; or

21 (ii) to any applicant proposing to locate a mooring buoy consistent with a water use
22 plan that is included in either the local zoning or land use plan.

23 (C) All mooring fields shall provide an area for access to any mooring(s) and other land based
24 operations that shall include wastewater pumpout, trash disposal and vehicle parking;

25 (D) To protect water quality of shellfishing areas, mooring fields shall not be located within
26 areas where shellfish harvesting for human consumption is a significant existing use or
27 adjacent to such areas if shellfish harvest closure is anticipated to result from the location
28 of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution
29 Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted
30 pursuant to that section, shellfish harvesting is a significant existing use if it can be
31 established that shellfish have been regularly harvested for human consumption since
32 November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable
33 habitat and are available and suitable for harvesting for the purpose of human consumption.
34 The Division of Marine Fisheries shall be consulted regarding the significance of shellfish
35 harvest as an existing use and the magnitude of the quantities of shellfish that have been
36 harvested or are available for harvest in the area where harvest will be affected by the
37 development;

- 1 (E) Moorings shall not be located without written consent from the leaseholders or owners of
2 submerged lands that have been leased from the state or deeded by the State;
- 3 (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation
4 throughout all federally maintained channels. This includes permanent or temporary
5 mooring sites, speed or traffic reductions, or any other device, either physical or regulatory,
6 which may cause a federally maintained channel to be restricted;
- 7 (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation
8 and degrade water quality in violation of EMC standards;
- 9 (H) Moorings and the associated land based operation design shall comply with all applicable
10 EMC requirements for management of stormwater runoff;
- 11 (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of
12 any waste from boat toilets or any other discharge and listing the availability of local pump-
13 out services and waste disposal;
- 14 (J) Freestanding moorings associated with commercial shipping, public service, or temporary
15 construction or salvage operations may be permitted without a public sponsor;
- 16 (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing
17 including the length of the vessel to be moored. Moorings and the attached vessel shall not
18 interfere with the access of any riparian owner nor shall it block riparian access to channels
19 or deep water, which allows riparian access. Freestanding moorings shall not interfere with
20 the ability of any riparian owner to place a pier for access;
- 21 (L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas
22 or in a manner that interferes with the operations of an access through any bridge;
- 23 (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard
24 and the WRC requirements and the required marking maintained for the life of the
25 mooring(s); and
- 26 (N) The type of material used to create a mooring must be free of pollutants and of a design
27 and type of material so as to not present a hazard to navigation or public safety.
- 28 (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine
29 systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if
30 all of the following conditions are met:
- 31 (A) the area to be filled was not created by excavating lands which were below the normal high
32 water or normal water level;
- 33 (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed
34 the elevation of said wetlands so that wetland function will be restored;
- 35 (C) the filling will not adversely impact any designated primary nursery area, shellfish bed,
36 submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right
37 or public trust usage; and

1 (D) the filling will not adversely affect the value and enjoyment of property of any riparian
2 owner.

3 (12) "Submerged Lands Mining"

4 (A) Development Standards. Mining of submerged lands shall meet all the following standards:

5 (i) The biological productivity and biological significance of mine sites, or borrow
6 sites used for sediment extraction, shall be evaluated for significant adverse
7 impacts and a protection strategy for these natural functions and values provided
8 with the State approval request or permit application;

9 (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and
10 significant benthic communities identified by the Division of Marine Fisheries or
11 the WRC shall be avoided;

12 (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509
13 of this Subchapter; shipwrecks identified by the Department of Cultural
14 Resources; and unique geological features that require protection from
15 uncontrolled or incompatible development as identified by the Division of
16 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

17 (iv) Mining activities shall not be conducted on or within 500 meters of significant
18 biological communities identified by the Division of Marine Fisheries or the
19 WRC, such as high relief hard bottom areas. "High relief" is defined for this Part
20 as relief greater than or equal to one-half meter per five meters of horizontal
21 distance;

22 (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine
23 or ocean resources; and

24 (vi) Mining activities shall not affect potable groundwater supplies, wildlife,
25 freshwater, estuarine, or marine fisheries.

26 (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the
27 applicant amending the mining proposal to include measures necessary to ensure
28 compliance with the provisions of the Mining Act and the rules for development set out in
29 this Subchapter. Permit conditions shall also include:

30 (i) Monitoring by the applicant to ensure compliance with all applicable development
31 standards; and

32 (ii) A determination of the necessity and feasibility of restoration shall be made by
33 the Division of Coastal Management as part of the permit or consistency review
34 process. Restoration shall be necessary where it will facilitate recovery of the pre-
35 development ecosystem. Restoration shall be considered feasible unless, after
36 consideration of all practicable restoration alternatives, the Division of Coastal
37 Management determines that the adverse effects of restoration outweigh the

benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;

(D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and

(E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

(13) "Wind Energy Facilities"

(A) An applicant for the development and operation of a wind energy facility shall provide:

(i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;

(ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;

(iii) an evaluation of avian and bat impacts of the proposed facility;

(iv) an evaluation of viewshed impacts of the proposed facility;

(v) an evaluation of potential user conflicts associated with development in the proposed project area; and

(vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.

(B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:

(i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;

(ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;

(iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural

1 Resources and unique geological features that require protection from
2 uncontrolled or incompatible development as identified by the Division of
3 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

4 (iv) Development activities shall be timed to avoid significant adverse impacts on the
5 life cycles of estuarine or ocean resources, or wildlife;

6 (v) Development or operation of a wind energy facility shall not jeopardize the use
7 of the surrounding waters for navigation or for other public trust rights in public
8 trust areas or estuarine waters; and

9 (vi) Development or operation of a wind energy facility shall not interfere with air
10 navigation routes, air traffic control areas, military training routes or special use
11 airspace and shall comply with standards adopted by the Federal Aviation
12 Administration and codified under 14 CFR Part 77.13.

13 (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant
14 amending the proposal to include measures necessary to ensure compliance with the
15 standards for development set out in this Rule. Permit conditions may include monitoring
16 to ensure compliance with all applicable development standards; and

17 (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public
18 benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this
19 Rule.
20

21 *History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*
22 *Eff. September 9, 1977;*
23 *Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;*
24 *RRC Objection due to ambiguity Eff. March 21, 1996;*
25 *Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;*
26 *June 1, 2010; August 1, 1998; May 1, 1996;*
27 *Readopted Eff. July 1, 2020;*
28 *Amended Eff. July 1, 2023; August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0308

DEADLINE FOR RECEIPT: Friday, June 9, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout the Rule, the terms “significant adverse impact,” “adverse impact,” and “adverse effect” are used without definition or example. Please define these terms generally, and if a particular term has a different meaning based upon the context in which it used, please define the term in each context.

As noted in the Commission’s September 2022 objection (continued in February 2023), the policy statements in Rules 07M .0201 and .0202 are subject to objection for lack of statutory authority, lack of necessity, and failure to comply with the APA. I believe an effort to enforce those rules here—in subpart (a)(1)(A)—would subject this rule to a similar objection.

In (a)(1)(B), line 11, add a comma following “groins”.

In (a)(1)(D), line 17, please define “substantial”.

In (a)(1)(G), (H), and (I), I am not sure why you need three different subparts to describe exceptions to this Rule’s standards. Couldn’t these be combined?

In (a)(1)(H)(i), line 34, capitalize “state” if referring only to the State of North Carolina.

In (a)(1)(I)(i), p.2, line 12, please define “regional significance”.

In (a)(1)(J)(ii), line 29, please define “practical alternative.”

In (a)(2)(L), p.5, line 20, “three”, “five” and “seven” should use numerals, as they’re part of a phrase containing a number over 9.

In (a)(3), p.5, line 26, what does it mean for the sand to be “compatible” with existing grain size?

Brian Liebman
Commission Counsel
Date submitted to agency: May 26, 2023

In (a)(4), lines 28-30, please eliminate the parentheses and incorporate the parenthetical material into the body of the rule.

In (a)(4)(D), p.6, line 6, what are “natural or cultural resources”?

In (c)(1), line 34, please define “negligible”.

In (c)(4), p.7, lines 16-17, please eliminate the parentheses and incorporate the parenthetical material into the body of the rule.

In (c)(5), line 30-31, who or what agency determines whether the species is threatened or endangered?

In (d), line 32, add “Rule” before “.0306(a)(5)”.

In your History Note, there are three identified RRC objections from 1992, 1993, and 1995. Can you confirm that these objections have been satisfied?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: May 26, 2023

1 15A NCAC 07H .0308 is amended as published in 37:14 NCR 1003-1008 as follows:

2
3 **15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

4 (a) Ocean Shoreline Erosion Control Activities:

5 (1) Use Standards Applicable to all Erosion Control Activities:

6 (A) All oceanfront erosion response activities shall be consistent with the general policy
7 statements in 15A NCAC 07M .0200.

8 (B) Permanent erosion control structures may cause significant adverse impacts on the value
9 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,
10 therefore, unless specifically authorized under the Coastal Area Management Act, are
11 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and
12 breakwaters.

13 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront
14 properties without regard to the size of the structure on the property or the date of its
15 construction.

16 (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that
17 sustain substantial habitat for fish and wildlife species, as identified by State or federal
18 natural resource agencies during project review, unless mitigation measures are
19 incorporated into project design, as set forth in Rule .0306(h) of this Section.

20 (E) Project construction shall be timed to minimize adverse effects on biological activity.

21 (F) Prior to completing any erosion response project, all exposed remnants of or debris from
22 failed erosion control structures must be removed by the permittee.

23 (G) Permanent erosion control structures that would otherwise be prohibited by these standards
24 may be permitted on finding by the Division that:

25 (i) the erosion control structure is necessary to protect a bridge that provides the only
26 existing road access on a barrier island, that is vital to public safety, and is
27 imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;

28 (ii) the erosion response measures of relocation, beach nourishment or temporary
29 stabilization are not adequate to protect public health and safety; and

30 (iii) the proposed erosion control structure will have no adverse impacts on adjacent
31 properties in private ownership or on public use of the beach.

32 (H) Structures that would otherwise be prohibited by these standards may also be permitted on
33 finding by the Division that:

34 (i) the structure is necessary to protect a state or federally registered historic site that
35 is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this
36 Rule;

- 1 (ii) the erosion response measures of relocation, beach nourishment or temporary
2 stabilization are not adequate and practicable to protect the site;
- 3 (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- 4 (iv) a permit for a structure under this Part may be issued only to a sponsoring public
5 agency for projects where the public benefits outweigh the significant adverse
6 impacts. Additionally, the permit shall include conditions providing for mitigation
7 or minimization by that agency of significant adverse impacts on adjoining
8 properties and on public access to and use of the beach.
- 9 (I) Structures that would otherwise be prohibited by these standards may also be permitted on
10 finding by the Division that:
- 11 (i) the structure is necessary to maintain an existing commercial navigation channel
12 of regional significance within federally authorized limits;
- 13 (ii) dredging alone is not practicable to maintain safe access to the affected channel;
- 14 (iii) the structure is limited in extent and scope to that necessary to maintain the
15 channel;
- 16 (iv) the structure shall not have significant adverse impacts on fisheries or other public
17 trust resources; and
- 18 (v) a permit for a structure under this Part may be issued only to a sponsoring public
19 agency for projects where the public benefits outweigh the significant adverse
20 impacts. Additionally, the permit shall include conditions providing for mitigation
21 or minimization by that agency of any significant adverse impacts on adjoining
22 properties and on public access to and use of the beach.
- 23 (J) The Commission may renew a permit for an erosion control structure issued pursuant to a
24 variance granted by the Commission prior to 1 July 1995. The Commission may authorize
25 the replacement of a permanent erosion control structure that was permitted by the
26 Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the
27 Commission finds that:
- 28 (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- 29 (ii) there is no practical alternative to replacing the structure that will provide the same
30 or similar benefits; and
- 31 (iii) the replacement structure will comply with all applicable laws and with all rules,
32 other than the rule or rules with respect to which the Commission granted the
33 variance, that are in effect at the time the structure is replaced.
- 34 (K) Proposed erosion response measures using innovative technology or design shall be
35 considered as experimental and shall be evaluated on a case-by-case basis to determine
36 consistency with 15A NCAC 07M .0200 and general and specific use standards within this
37 Section.

1 (2) Temporary Erosion Control Structures:

2 (A) Permittable temporary erosion control structures shall be limited to sandbags placed
3 landward of mean high water and parallel to the shore.

4 (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be
5 used to protect only imminently threatened roads and associated right of ways and
6 buildings and their associated septic systems. A structure is considered imminently
7 threatened if its foundation, septic system, or right-of-way in the case of roads is less than
8 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from
9 the erosion scarp or in areas where there is no obvious erosion scarp may also be found to
10 be imminently threatened when site conditions, such as a flat beach profile or accelerated
11 erosion, increase the risk of imminent damage to the structure.

12 (C) Temporary erosion control structures shall be used to protect only the principal structure
13 and its associated septic system, but not appurtenances such as pools, gazebos, decks or
14 any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion
15 setback requirement.

16 (D) Temporary erosion control structures may be placed waterward of a septic system when
17 there is no alternative to relocate it on the same or adjoining lot so that it is landward of or
18 in line with the structure being protected.

19 (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of
20 the structure to be protected except to align with temporary erosion control structures on
21 adjacent properties, where the Division has determined that gaps between adjacent erosion
22 control structures may result in an increased risk of damage to the structure to be protected.
23 The landward side of such temporary erosion control structures shall not be located more
24 than 20 feet waterward of the structure to be protected or the right-of-way in the case of
25 roads. If a building or road is found to be imminently threatened and at an increased risk
26 of imminent damage due to site conditions such as a flat beach profile or accelerated
27 erosion, temporary erosion control structures may be located more than 20 feet waterward
28 of the structure being protected. In cases of increased risk of imminent damage, the location
29 of the temporary erosion control structures shall be determined by the Director of the
30 Division of Coastal Management or the Director's designee in accordance with Part (A) of
31 this Subparagraph.

32 (F) Temporary erosion control structures may remain in place for up to eight years for a
33 building and its associated septic system, a bridge or a road. The property owner shall be
34 responsible for removal of any portion of the temporary erosion control structure exposed
35 above grade within 30 days of the end of the allowable time period.

36 (G) An imminently threatened structure or property may be protected only once, regardless of
37 ownership, unless the threatened structure or property is located in a community that is

1 actively pursuing a beach nourishment project or an inlet relocation or stabilization project
2 in accordance with Part (H) of this Subparagraph. Existing temporary erosion control
3 structures may be permitted for additional eight-year periods provided that the structure or
4 property being protected is still imminently threatened, the temporary erosion control
5 structure is in compliance with requirements of this Subchapter, and the community in
6 which it is located is actively pursuing a beach nourishment or an inlet relocation or
7 stabilization project in accordance with Part (H) of this Subparagraph. In the case of a
8 building, a temporary erosion control structure may be extended, or new segments
9 constructed, if additional areas of the building become imminently threatened. Where
10 temporary structures are installed or extended incrementally, the time period for removal
11 under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control
12 structure was installed. For the purpose of this Rule:

- 13 (i) a building and its septic system shall be considered separate structures,
- 14 (ii) a road or highway may be incrementally protected as sections become imminently
15 threatened. The time period for removal of each contiguous section of temporary
16 erosion control structure shall begin at the time that the initial section was
17 installed, in accordance with Part (F) of this Subparagraph.

18 (H) For purposes of this Rule, a community is considered to be actively pursuing a beach
19 nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-
20 115.1 if it:

- 21 (i) has been issued an active CAMA permit, where necessary, approving such
22 project; or
- 23 (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment
24 Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage
25 Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of
26 Engineers and a commitment of local or federal money, when necessary; or
- 27 (iii) has received a favorable economic evaluation report on a federal project; or
- 28 (iv) is in the planning stages of a project designed by the U.S. Army Corps of
29 Engineers or persons meeting applicable State occupational licensing
30 requirements and initiated by a local government or community with a
31 commitment of local or state funds to construct the project or the identification of
32 the financial resources or funding bases necessary to fund the beach nourishment,
33 inlet relocation or stabilization project.

34 If beach nourishment, inlet relocation, or stabilization is rejected by the sponsoring agency
35 or community, or ceases to be actively planned for a section of shoreline, the time extension
36 is void for that section of beach or community and existing sandbags are subject to all
37 applicable time limits set forth in Part (F) of this Subparagraph.

- 1 (I) Once a temporary erosion control structure is determined by the Division of Coastal
2 Management to be unnecessary due to relocation or removal of the threatened structure, it
3 shall be removed to the maximum extent practicable by the property owner within 30 days
4 of official notification from the Division of Coastal Management regardless of the time
5 limit placed on the temporary erosion control structure. If the temporary erosion control
6 structure is determined by the Division of Coastal Management to be unnecessary due to
7 the completion of a storm protection project constructed by the U.S. Army Corps of
8 Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization
9 project, any portion of the temporary erosion control structure exposed above grade shall
10 be removed by the property owner within 30 days of official notification from the Division
11 of Coastal Management regardless of the time limit placed on the temporary erosion control
12 structure.
- 13 (J) Removal of temporary erosion control structures is not required if they are covered by sand.
14 Any portion of the temporary erosion control structure that becomes exposed above grade
15 after the expiration of the permitted time period shall be removed by the property owner
16 within 30 days of official notification from the Division of Coastal Management.
- 17 (K) The property owner shall be responsible for the removal of remnants of all portions of any
18 damaged temporary erosion control structure.
- 19 (L) Sandbags used to construct temporary erosion control structures shall be tan in color and
20 three to five feet wide and seven to 15 feet long when measured flat. Base width of the
21 temporary erosion control structure shall not exceed 20 feet, and the total height shall not
22 exceed six feet, as measured from the bottom of the lowest bag.
- 23 (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- 24 (N) Existing sandbag structures may be repaired or replaced within their originally permitted
25 dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- 26 (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size
27 and in accordance with Rule .0312 of this Section.
- 28 (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from
29 any point seaward of the vegetation line to create a protective sand dike or to obtain material for any
30 other purpose) is development and may be permitted as an erosion response if the following
31 conditions are met:
- 32 (A) The area on which this activity is being performed shall maintain a slope of adequate grade
33 so as to not endanger the public or the public's use of the beach and shall follow the pre-
34 emergency slope as closely as possible. The movement of material utilizing a bulldozer,
35 front end loader, backhoe, scraper, or any type of earth moving or construction equipment
36 shall not exceed one foot in depth measured from the pre-activity surface elevation;

- 1 (B) The activity shall not exceed the lateral bounds of the applicant's property unless
2 permission is obtained from the adjoining land owner(s);
- 3 (C) Movement of material from seaward of the mean low water line will require a CAMA
4 Major Development and State Dredge and Fill Permit;
- 5 (D) The activity shall not increase erosion on neighboring properties and shall not have an
6 adverse effect on natural or cultural resources;
- 7 (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well
8 as the threatened structure's foundations.

9 (b) Dune Protection, Establishment, Restoration and Stabilization.

- 10 (1) No development shall be permitted that involves the removal or relocation of primary or frontal
11 dune sand or vegetation that would adversely affect the integrity of the dune. Other dunes within
12 the ocean hazard area shall not be disturbed unless the development of the property is otherwise
13 impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted
14 by this Rule.
- 15 (2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent
16 dune ridges and shall be of the same configuration as adjacent natural dunes.
- 17 (3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency
18 situations, be broadened or extended in an oceanward direction.
- 19 (4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is
20 minimized. The filled areas shall be replanted or temporarily stabilized until planting can be
21 completed.
- 22 (5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand
23 in the area in which it is to be placed.
- 24 (6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune
25 systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.
- 26 (7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or
27 tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard
28 AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present,
29 or the crest of a frontal dune.
- 30 (8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized
31 and alternative site locations exist to avoid dune impacts.

32 (c) Structural Accessways:

- 33 (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed
34 and constructed in a manner that entails negligible alteration of the primary or frontal dune.
35 Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a)
36 of this Rule.

1 (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided
2 that:

3 (A) The accessway is exclusively for pedestrian use;

4 (B) The accessway is a maximum of six feet in width;

5 (C) Except in the case of beach ~~matting for a local, State, or federal government's public access,~~
6 matting, the accessway is raised on posts or pilings of five feet or less depth, so that
7 wherever possible only the posts or pilings touch the dune, in accordance with any more
8 restrictive local, State, or federal building requirements. Beach matting ~~for a local, State,~~
9 ~~or federal government's public access~~ shall be installed at grade and not involve any
10 excavation or fill of the dune; and

11 (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

12 (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it
13 meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this
14 Paragraph. Public fishing piers are allowed provided all other applicable standards of this Rule are
15 met.

16 (4) In order to preserve the protective nature of primary and frontal dunes, a structural accessway (such
17 as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access.
18 Such accessways shall be no greater than 15 feet in width and may be constructed of wooden
19 sections fastened together, or other materials approved by the Division, over the length of the
20 affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the
21 dune's function as a protective barrier against flooding and erosion by not reducing the volume of
22 the dune.

23 (5) Structural accessways and beach matting may be constructed no more than six feet seaward of the
24 waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights
25 and emergency access along the beach. Structural accessways and beach matting are not restricted
26 by the requirement to be landward of the First Line of Stable and Natural Vegetation as described
27 in Rule .0309(a) of this Section. A local, State, or federal entity may install beach matting farther
28 seaward to enhance handicap accessibility at a public beach access, subject to review by the Wildlife
29 Resources Commission and the U.S. Fish and Wildlife Service to determine whether the proposed
30 design or installation will have an adverse impact on sea turtles or other threatened or endangered
31 species.

32 (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this
33 Section and 15A NCAC 07J .0210 shall comply with the following standards:

34 (1) In order to avoid danger to life and property, all development shall be designed and placed so as to
35 minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any
36 building constructed within the ocean hazard area shall comply with relevant sections of the North
37 Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local

1 flood damage prevention ordinance as required by the National Flood Insurance Program. If any
2 provision of the building code or a flood damage prevention ordinance is inconsistent with any of
3 the following AEC standards, the more restrictive provision shall control.

- 4 (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if
5 round or eight inches to a side if square.
- 6 (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation
7 under the structure. For those structures so located on or seaward of the primary dune, the pilings
8 shall extend to five feet below mean sea level.
- 9 (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and
10 wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements
11 of this Part or shall be designed to break-away without structural damage to the main structure.

12
13 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
14 *Eff. June 1, 1979;*
15 *Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17,*
16 *1989;*
17 *Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*
18 *RRC Objection Eff. November 19, 1992 due to ambiguity;*
19 *RRC Objection Eff. January 21, 1993 due to ambiguity;*
20 *Amended Eff. March 1, 1993; December 28, 1992;*
21 *RRC Objection Eff. March 16, 1995 due to ambiguity;*
22 *Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*
23 *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*
24 *Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1,*
25 *2002;*
26 *Readopted Eff. December 1, 2020;*
27 *Amended Eff. July 1, 2023; August 1, 2022; December 1, 2021.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0207

DEADLINE FOR RECEIPT: Friday, June 9, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(2), lines 12-13, the clause “and by not reducing the volume of the dune” does not seem to make grammatical sense. Please revise the whole sentence for clarity.

Paragraph (b) is written in the passive tense, and as such it is unclear who must notify the CAMA local permit officer or DEQ representative. Please revise accordingly.

In (b), line 25, what are the standards for the “on-site review”? I’m assuming that the review is to “show” that the builder has met the criteria in (a), but the Rule does not explicitly say that.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07K .0207 is amended as published in 37:14 NCR 1008-1009 as follows:

2
3 **15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED**

4 (a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural
5 pedestrian accessways, including beach matting ~~installed by a local, State, or federal government~~ to provide public or
6 private access over primary and frontal dunes when such accessways can be shown to meet the following criteria:

- 7 (1) The accessway shall not exceed six feet in width and shall be for private residential or for public
8 access to an ocean beach. This exemption does not apply to accessways for commercial use or for
9 motor-powered vehicular use.
- 10 (2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not
11 necessary to construct the accessway. This means that the accessway shall be constructed over the
12 frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish
13 its capacity as a protective barrier against flooding and by not reducing the volume of the dune.
14 Driving of pilings into the dune or a local, State, or federal government's use of beach matting for
15 public access that is installed at grade and involves no excavation or fill shall not be considered
16 alteration of a frontal dune for the purposes of this Rule.
- 17 (3) The accessway shall conform with any applicable local or State building code standards.
- 18 (4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the
19 frontal or primary dune, provided they do not interfere with public trust rights and emergency access
20 along the beach. Structural accessways are not restricted by the requirement to be landward of the
21 First Line of Stable and Natural Vegetation as described in 15A NCAC 07H .0309(a).
- 22 (5) Damaged, non-functioning, or portions of accessways that become non-compliant with
23 Subparagraph (4) of this Paragraph shall be removed by the property owner.

24 (b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environmental
25 Quality representative shall be notified of the proposed activity to allow on-site review of the proposed accessway.
26 Notification can be by telephone, in person, or in writing and must include:

- 27 (1) name, address, and telephone number of landowner and location of work including county and
28 nearest community; and
- 29 (2) the dimensions of the proposed structural accessway.

30
31 *History Note: Authority G.S. 113A-103(5)c;*
32 *Eff. November 1, 1984;*
33 *Amended Eff. December 1, 1991; May 1, 1990;*
34 *Readopted Eff. August 1, 2021;*
35 *Amended Eff. July 1, 2023; December 1, 2021.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0603

DEADLINE FOR RECEIPT: Friday, June 9, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

As discussed at length in recent meetings, RRC has stated that policy language is not suitable for inclusion in the NC Administrative Code. That said, this Rule does not appear to contain pure policy statements. With respect to (a), I suggest removing the "It is the policy of the State of North Carolina" language, and merely say that "Floating structures shall not be allowed or permitted..."

In your History Note, please fix the reference to "119.2(a)(2)". I'd assumed this is for 113A-119.2(a)(2), but that is the definition of "discharge", and I don't see the relevance here.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07M .0603 is amended as published in 37:15 NCR 1047 as follows:

2

3 **15A NCAC 07M .0603 POLICY STATEMENTS**

4 (a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the
5 public trust waters of the coastal area except in a marina permitted as development pursuant to the Coastal Area
6 Management Act of 1974.

7 (b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

8 (c) A boat shall be deemed a floating structure when its means of propulsion has been removed or rendered inoperative
9 and it contains at least 200 square feet of living space area.

10 (d) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purpose
11 of this Rule, floating upweller systems are considered floating structures.

12 (e) Floating upweller systems may be permitted as a platform at a private docking facility in accordance with 15A
13 NCAC 07H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 07H .0208(b)(5).

14

15 *History Note: Authority G.S. 113A-102; 113A-103; 113A-107; 113A-108; 113A-118; 119.2(a)(2);*

16 *113A-120(a)(8);*

17 *Eff. July 1, 1983;*

18 *Readopted Eff. January 1, 2023;*

19 *Amended Eff. July 1, 2023.*