

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

AGENCY: Coastal Resources Commission

RULE CITATION: Generally, to all Rules in 15A NCAC 07M

DEADLINE FOR RECEIPT: July 14, 2022

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 Rules, the staff recommends the following changes be made:

The agency refers to itself as the "Commission" and the "CRC". It is preferable to be consistent throughout the agency's rules.

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

William W. Peaslee
Commission Counsel
Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0201 is readopted as published in 34:09 NCR 764 as follows:
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3 **SECTION .0200 - SHORELINE EROSION POLICIES**

4
5 **15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY**

6 It is hereby declared that the general welfare and public interest require that development along the ocean and
7 estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared
8 that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish
9 these public purposes, the planning of future land uses, reasonable rules and public expenditures should be
10 created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and
11 public resources resulting from recognized coastal hazards.

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13 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*
14 *Eff. March 1, 1979;*
15 *RRC Objection due to lack of necessity Eff. October 17, 1991;*
16 *Amended Eff. March 1, 1992;*
17 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .0202 is readopted as published in 34:09 NCR 764 as follows:

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3 **15A NCAC 07M .0202 POLICY STATEMENTS**

4 (a) Pursuant to Section 5, Article 14 of the North Carolina Constitution, proposals for shoreline erosion response
5 projects shall avoid losses to North Carolina's natural heritage. All means should be taken to identify and develop
6 response measures that will not adversely affect estuarine and marine productivity. The public right to use and enjoy
7 the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking,
8 swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach rescue
9 services. Private property rights to oceanfront properties including the right to protect that property in ways that are
10 consistent with public rights should be protected.

11 (b) Erosion response measures designed to minimize the loss of private and public resources to erosion should be
12 economically, socially, and environmentally justified. Preferred response measures for shoreline erosion shall include
13 but not be limited to AEC rules, land use planning and land classification, establishment of building setback lines,
14 building relocation, subdivision regulations and management of vegetation.

15 (c) The replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the
16 ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and
17 private property. Experience in North Carolina and other states has shown that beach restoration projects can present
18 a feasible alternative to the loss or massive relocation of oceanfront development. In light of this experience, beach
19 restoration and sand renourishment and disposal projects may be allowed when:

- 20 (1) Erosion threatens to degrade public beaches and to damage public and private properties;
21 (2) Beach restoration, renourishment or sand disposal projects are determined to be socially and
22 economically feasible and cause no significant adverse environmental impacts;
23 (3) The project is determined to be consistent with state policies for shoreline erosion response and state
24 use standards for Ocean hazard and Public Trust Waters Areas of Environmental Concern and the
25 relevant rules and guidelines of state and federal review agencies.

26 When the conditions set forth in this Paragraph can be met, the Coastal Resources Commission supports, within
27 overall budgetary constraints, state financial participation in Beach Erosion Control and Hurricane Wave Protection
28 projects that are cost-shared with the federal government and affected local governments pursuant to the federal
29 Water Resources Development Act of 1986 and the North Carolina Water Resources Development Program (G.S.
30 143-215.70-73).

31 (d) The following are required with state involvement (funding or sponsorship) in beach restoration and sand
32 renourishment projects:

- 33 (1) The entire restored portion of the beach shall be in permanent public ownership;
34 (2) It shall be a local government responsibility to provide adequate parking, public access, and services
35 for public recreational use of the restored beach.

36 (e) Temporary measures to counteract erosion, such as the use of sandbags and beach pushing, should be allowed,
37 but only to the extent necessary to protect property for a short period of time until threatened structures may be
38 relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures
39 must be compatible with public use and enjoyment of the beach.

1 (f) Efforts to permanently stabilize the location of the ocean shoreline with seawalls, groins, shoreline hardening,
2 sand trapping or similar protection devices shall not be allowed except when the project meets one of the specific
3 exceptions set out in 15A NCAC 7H .0308.

4 (g) The State of North Carolina will consider innovative institutional programs and scientific research that will provide
5 for effective management of coastal shorelines. The development of innovative measures that will lessen or slow the
6 effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties is encouraged.

7 (h) The planning, development, and implementation of erosion control projects will be coordinated with appropriate
8 planning agencies, affected governments and the interested public. Maximum efforts will be made by the state to
9 accommodate the interest of each interested party consistent with the project's objectives. Local, state, and federal
10 government activity in the coastal area should reflect an awareness of the natural dynamics of the ocean front.
11 Government policies should not only address existing erosion problems but should aim toward minimizing future
12 erosion problems. Actions required to deal with erosion problems are very expensive. In addition to the direct costs
13 of erosion abatement measures, many other costs, such as maintenance of projects, disaster relief, and infrastructure
14 repair will be borne by the public sector. Responses to the erosion should be designed to limit these public costs.

15 (i) The state will promote education of the public on the dynamic nature of the coastal zone and on effective measure
16 to cope with our ever changing shorelines.

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18 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*

19 *Eff. March 1, 1979;*

20 *Amended Eff. March 1, 1985;*

21 *RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;*

22 *Amended Eff. March 1, 1992;*

23 *RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;*

24 *Amended Eff. May 4, 1995;*

25 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .0401 is readopted as published in 34:09 NCR 764 as follows:

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3 **SECTION .0400 - COASTAL ENERGY POLICIES**
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5 **15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY**

6 (a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made
7 available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy
8 resources within the state and in offshore waters can serve important regional and national interests. However, unwise
9 development of energy facilities or energy resources can conflict with the recognized and equally important public
10 interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly
11 coastal lands and waters. Therefore, in order to balance the public benefits of necessary energy development with the
12 need to:

- 13 (1) protect valuable coastal resources; and
14 (2) preserve access to and utilization of public trust resources, the planning of future uses affecting both
15 land and public trust resources,

16 the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management
17 Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse
18 impact upon vital coastal resources or uses, public trust areas and public access rights.

19 (b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential
20 to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing
21 actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of
22 the federally approved North Carolina Coastal Management Program, and that exploration, development and
23 production activities associated with such leases comply with those enforceable policies. Enforceable policies
24 applicable to OCS activities include all the provisions of this Subchapter as well as any other applicable federally
25 approved components of the North Carolina Coastal Management Program. All permit applications, plans and
26 assessments related to exploration or development of OCS resources and other relevant energy facilities shall contain
27 sufficient information to allow analysis of the consistency of all proposed activities with these Rules.

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29 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;*
30 *Eff. March 1, 1979;*
31 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*
32 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*
33 *Amended Eff. February 1, 2011; August 1, 2000;*
34 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0402

DEADLINE FOR RECEIPT: July 14, 2022

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

Generally, to the Rule: Consider whether “analysis” should be employed rather than “discussion”. It would also appear that the agency conflates a “definition” with that which is required to be in the “Impact Assessment”.

(a), Page 1, Line 4: Insert a comma after “economic”.

(a), Page 1, Lines 5-8: This appears to be unnecessarily wordy. Consider re-writing it.

(a), Page 1, Lines 7-8: By “adjacent lands” does the agency mean lands adjacent to public trust waters? Is the term “coastal resources” defined by statute or code? If so, where? If not, the term should be defined or removed. What does the agency mean by “activities”? Whose activities? Consider adding “pursuant [or as defined by] to G.S. 113A-103(2)” after “coastal area”.

(a)(1)(A), Page 1, Line 12: Is the term “barrier island” defined by statute or code or is that a term recognized by the regulated public? If so, please explain? If not, the term should be defined or removed.

(a)(1)(B), Page 1, Line 17: What kind of “evidence” does the Commission seek?

(a)(1)(C), Page 1, Line 18-20: “Previously identified” by what agency and pursuant to what authority? Consider whether “procedure” is necessary.

(a)(1)(C), Page 1, Line 19: Does the agency mean “and” rather than “or”?

(5), Page 1, Line 32: What makes an adverse impact “significant”?

(6), Page 1, Line 34: By “property” does the agency mean real property, personal property, or both?

(9), Page 2, Lines 1-3: This is vague and ambiguous.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

(11), Page 2, Line 10: What does the agency mean by “a specific demonstration”? is that different than an analysis?

Page 2, Line 13: What does the agency mean by “associated energy exploration” and “development activities”?

(b), Page 2, Lines 17-19: This is ambiguous and subjective. What is the standard of size, magnitude, and impacts? Who determines this? What does the agency mean by “affects”? Would a residential solar panel in the coastal area “affect” or have the “potential to affect” the “land”? Definitions by their nature should be finite, not subjective. They should be clear and unambiguous. Consider simply listing the type of facilities rather than leaving it open ended and subject to the caprices of the agency.

(b)(1), Page 2, Line 20: A residential garage is “capable” of being used to remove impurities from a pint of petroleum, thus refining it. Is this what the agency intended?

(b)(2), Page 2, Line 21-22: What does the agency mean by “terminals”? Is this a term which the regulated public would readily understand without consultation or further explanation from the agency? What does the agency mean by “petroleum products”? Does the Ace Hardware Store which sells cans of DW40 qualify as a “terminal”?

(b)(7), Page 2, Line 30: Define or delete “major”.

(b)(8), Page 2, Line 31-32: Consider deleting “and structures relocated from other states or countries” as these appears to be redundant

(b)(9), Page 2, Lines 34-35: What does the agency mean by “onshore support and staging facilities”? Is this a term which the regulated public would readily understand without consultation or further explanation from the agency?

(b)(9), Page 2, Lines 36-37: What does the agency mean by “development activities”? What criteria is used in determining whether development activities “may impact” the state’s coastal area?

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 .0402 is readopted as published in 34:09 NCR 764 as follows:

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3 **15A NCAC 07M .0402 DEFINITIONS**

4 (a) "Impact Assessment" is an analysis which discusses the potential environmental, economic and social
5 consequences, including cumulative and secondary impacts, of a proposed major energy facility. At a minimum, the
6 assessment shall include the following and for each of the following shall discuss and assess any effects the project
7 will have on the use of public trust waters, adjacent lands and on the coastal resources, including the effects caused
8 by activities outside the coastal area:

9 (1) a discussion of the preferred sites for those elements of the project affecting the use of public trust
10 waters, adjacent lands and the coastal resources:

11 (A) In all cases where the preferred site is located within an area of environmental concern
12 (AEC) or on a barrier island, the applicant shall identify alternative sites considered and
13 present a full discussion [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the
14 reasons why the chosen location was deemed more suitable than another feasible alternate
15 site;

16 (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall
17 present evidence to support the proposed location over a feasible alternate site;

18 (C) In those cases where an applicant chooses a site previously identified by the state as suitable
19 for such development and the site is outside an AEC or not on a barrier island, alternative
20 site considerations shall not be required as part of this assessment procedure;

21 (2) a discussion of the economic impacts, both positive and negative, of the proposed project. This
22 discussion shall focus on economic impacts to the public, not on matters that are purely internal to
23 the corporate operation of the applicant. No proprietary or confidential economic data shall be
24 required. This discussion shall include analysis of likely adverse impacts upon the ability of any
25 governmental unit to furnish necessary services or facilities as well as other secondary impacts of
26 significance;

27 (3) a discussion of potential adverse impacts on coastal resources, including marine and estuarine
28 resources and wildlife resources, as defined in G.S. 113-129;

29 (4) a discussion of potential adverse impacts on existing industry and potential limitations on the
30 availability of, and accessibility to, coastal resources, including beach compatible sand and water,
31 for future use or development;

32 (5) a discussion of potential significant adverse impacts on recreational uses and scenic, archaeological
33 and historic resources;

34 (6) a discussion of potential risks to human life or property;

35 (7) a discussion of the impacts on the human environment including noise, vibration and visual impacts;

36 (8) a discussion of the procedures and time needed to secure an energy facility in the event of severe
37 weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;

- 1 (9) other specific data necessary for the various state and federal agencies and commissions with
2 jurisdiction to evaluate the consistency of the proposed project with relevant standards and
3 guidelines;
- 4 (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and
5 related structures. The plan shall include an estimate of the cost to decommission and remove the
6 energy facility including a discussion of the financial instrument(s) used to provide for the
7 decommissioning and the removal of the structures that comprise the energy facility. The plan shall
8 also include a proposed description of the condition of the site once the energy facility has been
9 decommissioned and removed.
- 10 (11) a specific demonstration that the proposed project is consistent with relevant local land use plans
11 and with guidelines governing land uses in AECs.

12 Any impact assessment for a proposed major energy facility shall include a discussion of the items described in
13 Subparagraphs (a)(1) through (11) of this Rule for the associated energy exploration or development activities
14 including all foreseeable assessments of resource potential, including the gathering of scientific data, exploration
15 wells, and any delineation activities that are likely to follow development, production, maintenance and
16 decommissioning.

17 (b) "Major energy facilities" are those energy facilities which because of their size, magnitude or scope of impacts,
18 have the potential to affect any land or water use or coastal resource of the coastal area. For purposes of this definition,
19 major energy facilities shall include, but are not necessarily limited to, the following:

- 20 (1) Any facility capable of refining petroleum products;
- 21 (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum
22 products or synthetic gas;
- 23 (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- 24 (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- 25 (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other
26 equipment necessary for the operation of a wind generating facility that cumulatively, with any other
27 wind energy facility whose turbines are located within one-half mile of one another, are capable of
28 generating three megawatts or larger;
- 29 (6) Thermal energy generation;
- 30 (7) Major pipelines 12 inches or more in diameter that carry petroleum products or synthetic gas;
- 31 (8) Structures, including drillships and floating platforms and structures relocated from other states or
32 countries, located in offshore waters for the purposes of energy exploration, development or
33 production; and
- 34 (9) Onshore support or staging facilities related to offshore energy exploration, development or
35 production.

36 (c) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which
37 development activities may impact any land or water use or natural resource of the state's coastal area.

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History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. October 1, 1988;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. March 1, 2011; August 1, 2000;
Readopted Eff. August 1, 2022.

1 15A NCAC 07M .0403 is readopted as published in 34:09 NCR 764 as follows:

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3 **15A NCAC 07M .0403 POLICY STATEMENTS**

4 (a) The placement and operations of major energy facilities in or affecting the use of public trust waters and adjacent
5 lands or coastal resources of North Carolina shall be done in a manner that allows for protection of the environment
6 and local and regional socio-economic goals as set forth in the local land-use plan(s) and state guidelines in 15A
7 NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory
8 standards and shall comply with local land use plans and with use standards for development within AECs, as set forth
9 in 15A NCAC 07H.

10 (b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water
11 use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated
12 with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be
13 in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant. If appropriate
14 environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act
15 (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact
16 assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be
17 used to review state permit applications for the project or subsequent consistency determinations.

18 (c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they
19 may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for
20 energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind
21 energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the
22 General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall
23 demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

24 (d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances
25 when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it
26 can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the
27 public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have
28 been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be
29 determined after consideration of, as appropriate, economics, technical feasibility, aerial extent of impacts, uniqueness
30 of impacted area, and other relevant factors.

31 (e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources.
32 Energy development shall be sited and designed to provide maximum protection of views to and along the ocean,
33 sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

34 (f) All energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resource shall be
35 sited and operated so as to comply with the following criteria:

- 36 (1) Activities that could result in significant adverse impacts on resources of the coastal area, including
37 marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant

1 adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be
2 avoided unless site specific information demonstrates that each such activity will result in no
3 significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;

4 (2) For petroleum facilities, necessary data and information required by the state for state permits and
5 federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release
6 or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing
7 the best available technology to be followed in the event of a release or spill. The information must
8 demonstrate that the potential for petroleum release or spills and ensuing damage to coastal
9 resources has been minimized and shall factor environmental conditions, currents, winds, and
10 inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring
11 an Oil Spill Response Plan, this information shall be included in such a plan;

12 (3) Dredging, spoil disposal and construction of related structures that are likely to have significant
13 adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be
14 minimized, and any unavoidable actions of this sort shall minimize damage to the marine
15 environment;

16 (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access
17 to public trust areas, and areas with high biological or recreational value such as those listed in
18 Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or
19 interference is likely to have significant adverse impacts on the use of public trust waters and
20 adjacent lands or coastal resources;

21 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
22 shall be avoided to the extent that damage to such structures resulting from geological phenomena
23 is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or
24 coastal resources;

25 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
26 extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently
27 in advance of the commencement of severe weather to ensure that significant adverse impacts on
28 the use of public trust waters, adjacent lands and coastal resources shall be avoided;

29 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;

30 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
31 environmental or natural resources of more than local significance, as defined in G.S. 113A-
32 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;

33 (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and
34 surrounding areas, such as ocean front areas with high erosion rates, areas having a history of
35 overwash or inlet formation, and areas in the vicinity of existing inlets;

36 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
37 areas shall be avoided:

- 1 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
2 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
3 spawning areas and essential fish habitat areas of particular concern as designated by the
4 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic
5 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
6 migratory bird routes;
- 7 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
8 for registration or dedication by the North Carolina Natural Heritage Program;
- 9 (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
- 10 (D) anchorage areas and port areas;
- 11 (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- 12 (F) dump sites;
- 13 (G) primary dunes and frontal dunes;
- 14 (H) established recreation or wilderness areas, such as federal, state and local parks, forests,
15 wildlife refuges and other areas used in a like manner;
- 16 (I) military air space, training or target area and transit lanes;
- 17 (J) cultural or historic sites of more than local significance; and
- 18 (K) segments of Wild and Scenic River System.
- 19 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
20 Nesting and spawning periods shall be avoided; and
- 21 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
22 existing prior to construction shall be restored as soon as practicable following abandonment. For
23 abandoned facilities outside the coastal area, habitat in the areas shall be restored to its
24 preconstruction state and functions as soon as practicable if the abandonment of the structure is
25 likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal
26 resources.

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28 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;*
29 *Eff. March 1, 1979;*
30 *Amended Eff. April 1, 1992;*
31 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*
32 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*
33 *Amended Eff. February 1, 2011; August 1, 2000;*
34 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .0503 is readopted as published in 34:09 NCR 764 as follows:

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3 **15A NCAC 07M .0503 POLICY STATEMENTS**

4 (a) The lead responsibility for directing all disaster warning, evacuation and relief activities lies with the Secretary of
5 the Department of Crime Control and Public Safety. The North Carolina Coastal Management Program will assist
6 the Department of Crime Control and Public Safety in preparing plans and providing services to disaster areas.

7 (1) The Coastal Resources Commission (hereafter referred to as "Commission") will establish
8 procedures for streamlining permit procedures for post-disaster reconstruction.

9 (2) The Division of Coastal Management (hereinafter referred to as "Division") will provide staff
10 support to Crime Control and Public Safety as requested. Types of assistance which may prove
11 helpful are assistance with damage assessment, participation at the disaster assistance center, and
12 advice and assistance to State and federal public assistance offices.

13 (3) The Commission will require that local governments include disaster planning activities in their
14 land use plans.

15 (b) The most effective and cost-efficient manner of dealing with natural disasters is mitigation. The Commission
16 hereby establishes guidelines for planning to mitigate the effects of natural disasters.

17 (1) The Commission will advise the North Carolina Building Code Council and the Federal Insurance
18 Administration on standards for development in coastal hazard areas.

19 (2) The Commission will establish guidelines for local governments to establish reconstruction plans
20 which contain:

21 (A) local plans and policies pertaining to desired relocation of public and private development;

22 (B) local policies pertaining to desired relocation of roads and utilities such as water, sewer,
23 and electricity;

24 (C) local plans for possible public acquisition of hazardous areas, if desirable for public access
25 or use;

26 (D) a detailed inventory of structures in hazardous areas to assist in determining damage;

27 (E) a list of property owners and addresses to assist in notifying of damage;

28 (F) local disaster plans shall be coordinated with mitigation plans prepared for the Federal
29 Emergency Management Agency; and

30 (G) city and county plans shall be coordinated within counties and with adjoining jurisdictions.

31 (3) The Commission and office will advise the Department of Transportation and all public utilities as
32 to the applicable policies and standards for development in areas where roads, bridges, water and
33 sewer lines and other utilities are to be reconstructed or replaced. These policies include:

34 (A) Before damaged utilities and/or roads are rebuilt, the locations of existing easements and
35 rights-of-ways in relation to new and future shorelines shall be assessed both as to their
36 future safety from storm and erosion damage and their relationship to future development
37 patterns.

- 1 (B) Within easements and rights-of-way, utilities and/or roads should be placed as far landward
- 2 as practicable.
- 3 (C) If existing easements and rights-of-ways are too close to the shoreline to be safely used,
- 4 new easements and rights-of-ways that are freer from coastal hazards shall be sought.
- 5 (D) If existing easements and rights-of-ways are too close to the shoreline to safely allow
- 6 development seaward of them, the easements and rights-of-ways should be relocated
- 7 landward unless there is public open-space acquisition of these lands.
- 8 (E) All utilities and roads shall be rebuilt according to sound coastal engineering practices and
- 9 to the standards listed in (b)(6)(A) in this Rule to assure that damages from storms are
- 10 minimized.
- 11 (4) The Commission and office will notify agencies responsible for public works projects that dunes,
- 12 berms, and other flood control structures shall be rebuilt only in line with local plans.
- 13 (5) Temporary emergency housing should be located outside of hazardous areas.
- 14 (6) All repair and rebuilding of private and public structures shall be done in a safe and sound manner.
- 15 (A) All reconstruction shall comply with the standards of the Guidelines for Areas of
- 16 Environmental Concern, North Carolina Building Code (including wind resistant
- 17 standards), the National Flood Insurance Program and local reconstruction plans.
- 18 (B) If land is resubdivided, all lots shall allow adequate room for construction under the
- 19 standards listed in this Rule.
- 20 (7) If located in areas desirable for public access or use, lots upon which structures have been destroyed
- 21 should be acquired for public use.
- 22 (A) Local governments should establish policies in their local land use plans for public
- 23 acquisition of highly vulnerable areas for public access and use in their land use plans.
- 24 (B) The Federal Emergency Management Agency and other state and federal agencies should
- 25 provide monies for public acquisition rather than continuing to fund rebuilding in high
- 26 hazard areas.

27
28 *History Note: Authority G.S. 113A-119; 113A-124(b);*
29 *Eff. October 1, 1982;*
30 *Amended Eff. May 1, 1990;*
31 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0601 Declaration of General Policy

DEADLINE FOR RECEIPT: July 14, 2022

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:

Page 1, Lines 6-8: It is difficult to discern whether the agency intends to make a policy statement or impose substantive requirements upon the regulated public. What does the agency mean by "infringe", "discharge", and "coastal area"?

History Note, Page 1, Line 11: G.S. 113A-124(c)(5) has been repealed. Please explain the agency's authority to adopt this Rule.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0601 is readopted as published in 34:09NCR 764 as follows:

2

3

SECTION .0600 - FLOATING STRUCTURE POLICIES

4

5 15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

6 It is hereby declared that the general welfare and public interest require that floating structures to be used for residential
7 or commercial purposes not infringe upon the public trust rights nor discharge into the public trust waters of the coastal
8 area of North Carolina.

9

10 *History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);*

11 *113A-124(c)(5);*

12 *Eff. July 1, 1983;*

13 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .0602 is readopted as published in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .0602 DEFINITIONS**

4 (a) A boat is a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine,
5 sail, oar, or paddle or other means, which is used to travel from place to place by water.

6 (b) A "floating structure" is any structure, not a boat, supported by a means of flotation, designed to be used without
7 a permanent foundation, which is used or intended for human habitation or commerce. A structure will be considered
8 a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location.

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

11

12 *History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);*

13 *113A-124(c)(5);*

14 *Eff. July 1, 1983;*

15 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0603 Policy Statements

DEADLINE FOR RECEIPT: July 14, 2022

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:

(a), Page 1, Line 5: "Permitted marines" pursuant to what?

(b), Page 1, Line 6: Explain the agency's authority to regulate floating structures outside of the coastal area?

History Note: Explain why G.S. 113A-118 is cited in the history note.

History Note: Line 9: G.S. 113A-124(c)(5) has been repealed. Please explain the agency's authority to adopt this Rule.

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 readopted as published in 34:09 NCR 764 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 permitted marinas.

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

7

8 *History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);*

9

113A-124(c)(5);

10

Eff. July 1, 1983;

11

Readopted Eff. August 1, 2022.

1 15A NCAC 07M .0701 is readopted as published in 34:09 NCR 764 as follows:

2
3 **SECTION .0700 - MITIGATION POLICY**

4
5 **15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY**

6 (a) It is the policy of the State of North Carolina to require that adverse impacts to coastal lands and waters be
7 mitigated or minimized through proper planning, site selection, compliance with standards for development, and
8 creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained as complete and
9 functional systems by mitigating the adverse impacts of development as much as feasible by enhancing, creating, or
10 restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.

11 (b) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies and
12 objectives set forth in the Coastal Area Management Act for coastal resource management and development.
13 Mitigation shall be used to enhance coastal resources and offset any potential losses occurring from approved and
14 unauthorized development. Proposals to mitigate losses of coastal resources shall be considered only for those projects
15 shown to be in the public interest, as defined by the standards in 15A NCAC 7M .0703, and only after all other
16 reasonable means of avoiding or minimizing such losses have been exhausted.

17
18 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
19 *Eff. January 1, 1984;*
20 *Amended Eff. September 1, 1985;*
21 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0702 Definitions

DEADLINE FOR RECEIPT: July 14, 2022

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:

Page 1, Line 4: Change "policy to "subchapter" if that is what the agency intended. A definition can only be included in the Code if it defines language in a rule, not a policy. Please see G.S. 150B-2(8a) for the definition of "rule".

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0702 is readopted as published in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .0702 DEFINITIONS**

4 For the purposes of this policy statement mitigation is defined as the enhancement, creation, or restoration of coastal
5 resources to maintain the characteristics and processes of coastal ecosystems such as natural biological productivity,
6 habitat and species diversity, physical integrity, water quality and aesthetics.

7

8 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*

9

Eff. January 1, 1984;

10

Readopted Eff. August 1, 2022.

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0703 Mitigation Candidacy

DEADLINE FOR RECEIPT: July 14, 2022

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:

Page 1, Line 4-5: What is a “development project for mitigation candidacy”? The statutes listed in the History Note do not use the word “mitigation”. Please explain the agency’s authority for this Rule.

(a)(1), Page 1, Line 6: “Reasonable” and “Prudent” are ambiguous and subjective terms. What criteria will the agency use in making its determination?

(a)(2), Page 1, Line 9: “Close proximity” is an ambiguous and subjective term. The agency needs to define what it intends or delete the language.

(a)(3)(A), Page 1, Lines 13-15: “Clearly” is an undefined and ambiguous term. If it does not change the agency’s intention, consider using a recognized legal standard? What are “long range adverse effects”? “National and state importance” is an ambiguous and subjective term. The list of examples without criteria is not illustrative in this case. What criteria will be used? Remove “but is not limited to”. Place a comma after “funded”.

(a)(3)(A), Page 1, Lines: Place a comma, after “funded”. There seems to be a word missing. “Increased access opportunities” to what? “Available” seems unnecessary. What does the agency mean by “significant economic benefit”? Please explain how a “benefit” is “in accord” with local land use plans.

(a)(4), Page 1, Lines 19-20: What are “reasonable” means and measures? This is subjective and ambiguous.

(b), Page 1, Line 27: Is there a citation to the “permit process time period”?

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0703 is readopted as published in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0703 MITIGATION CANDIDACY**

4 (a) The CRC may approve a development project for mitigation candidacy if the applicant can demonstrate that all
5 of the following criteria can be met:

- 6 (1) there is no reasonable or prudent alternate design or location for the project that would avoid the
7 losses to be mitigated;
- 8 (2) the entire project for which the permit is requested is dependent upon being located within or in
9 close proximity to public trust waters and coastal wetlands;
- 10 (3) benefits to the public interest will clearly outweigh the long range adverse effects to the
11 environment. A benefit to the public interest may be established by a project which has been clearly
12 shown to be the least damaging alternative and which:
- 13 (A) if publicly funded creates benefits of national or state importance. This category may
14 include but is not limited to public roadways, navigation projects, state ports, and projects
15 designed to provide public access to the water;
- 16 (B) if privately funded provides increased access opportunities available to the general public
17 for free or for a nominal fee, or provides significant economic benefits to the state or
18 community in accord with the local land use plan;
- 19 (4) all reasonable means and measures to lessen the impacts of the project have been incorporated into
20 the project design.

21 (b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC
22 7M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the
23 environment overwhelmingly outweigh environmental losses.

24 (c) Mitigation candidacy may be considered by the CRC during the permit processing time prescribed in 15A NCAC
25 7J .0204, in accordance with the procedures set out in 15A NCAC 7J .0600 concerning declaratory rulings. The
26 applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 7M
27 .0703(a) provided that the applicant agrees that the permit processing time period will not run during the pendency of
28 the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to the applicant's request, a public
29 meeting will be held to discuss the proposed project and to assist the Commission in obtaining the information
30 necessary to make the declaratory ruling, and to receive comments from the public prior to presenting the ruling
31 request to the Commission. Information concerning the proposed mitigation may also be introduced at the meeting.
32 CRC approval of the mitigation candidacy is binding on the Commission and the person requesting it, in accordance
33 with 15A NCAC 7J .0603(e).

34
35 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
36 *Eff. January 1, 1984;*
37 *Amended Eff. September 1, 1985;*
38 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0704 Policy Statements

DEADLINE FOR RECEIPT: July 14, 2022

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:

(a)(3) Page 1, Line 10: Is there a size requirement to the “area”? What are the criteria for determining if an “area” is “desirable”?

(a)(4), Page 1, Lines 12-15: This is poorly worded. How can it be mitigation yet not mitigation?

(a)(4)(A), Page 1, Lines 16-18: What criteria is used in determining the “quality” of an area? What does the agency mean by “on a case-by-case basis? How else would it be considered?

(a)(4)(B), Page 1, Lines 19-20: What criteria is used in the consideration? What type of “state and federal regulatory control”? Is it state “and” federal control?

(a)(4)(C), Page 1, Lines 21: What type of “research or for management programs”? Does this include private research?

(a)(4)(D), Page 1, Lines 22: “Access” to what?

(b), Page 1, Lines 23-26: If a development represent no significant loss to coastal resources, please explain the agency’s authority to require mitigation?

(c), Page 1, Lines 27-28: To whose “losses” is the agency referring? What does the agency mean by “associated”? Who is required to “incorporate” mitigation proposals into project plans?

(d), Page 1, Lines 31: Explain the agency’s authority to pre-determine by rule whether a writing representing a purported agreement is a “contract” thus supplanting the judgement of a trier of fact?

(e), Page 1, Line 32: To which “review criteria” does the agency refer?

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

William W. Peaslee
Commission Counsel
Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0704 is readopted as published in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0704 POLICY STATEMENTS**

4 (a) The following forms of mitigation are ranked in order of preference:

- 5 (1) Enhancement of coastal resources with created or restored systems determined to be potentially
6 more productive of the resources characteristic of unaltered North Carolina ecosystems than those
7 destroyed.
- 8 (2) Creation or restoration of an area of similar ecological utility and potential biological value than that
9 destroyed or altered.
- 10 (3) Creation or restoration of an area with a desirable but different ecological function or potential than
11 that destroyed or altered.
- 12 (4) The following forms of mitigation will be considered even though they do not meet the definition
13 in 15A NCAC 7M .0702. They are actions which by themselves shall not be deemed adequate to
14 offset habitat losses, but may be used in combination with Subparagraphs (a) (1) through (3) to
15 achieve the stated goal of these Rules.
- 16 (A) Acquisition for public ownership of unique and ecologically important systems not
17 protected by state and/or federal regulatory programs. The type of impacts to be mitigated
18 and the quality of the area to be acquired will be considered on a case-by-case basis.
- 19 (B) Transfer of privately owned lands subject to state and federal regulatory control into public
20 ownership.
- 21 (C) Provisions of funds for research or for management programs.
- 22 (D) Increased public access for recreational use.

23 (b) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general
24 or specific use standards set forth in 15A NCAC 7H .0208. If a development represents no significant loss to coastal
25 resources, the mitigation proposal must be on-site, or proximate thereto, and must be designed to enhance the coastal
26 environment.

27 (c) Mitigation proposals to offset losses associated with publicly funded projects shall be reviewed by the staff with
28 the sponsoring agency and incorporated into project plans.

29 (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions
30 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126 and shall be
31 memorialized in a mitigation agreement which will constitute a contract between the applicant and the CRC.

32 (e) Those projects consistent with the review criteria for permit approval shall be exempt from mitigation
33 requirements.

34
35 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
36 *Eff. January 1, 1984;*
37 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0705 Review Procedures

DEADLINE FOR RECEIPT: July 14, 2022

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:

Page 1, Lines 4-5: Does the agency mean: An initial mitigation candidacy denial pursuant to 15A NCAC 7M .0703(e) or a denial of a permit containing mitigation proposals based upon inconsistency with 15A NCAC 7H .0208, shall be reviewed pursuant to Section .0300 of 15A NCAC 7J?

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

William W. Peaslee
Commission Counsel
Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0705 is readopted as published in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .0705 REVIEW PROCEDURES**

4 Initial denials of mitigation candidacy, pursuant to the procedures of 15A NCAC 7M .0703(c), and permit denials,
5 based on inconsistency with 15A NCAC 7H .0208, which are to be offset by mitigation proposals shall be reviewed
6 by the CRC through the appeal procedures set forth in 15A NCAC 7J .0300.

7

8 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*

9

Eff. January 1, 1984;

10

Amended Eff. November 1, 1984;

11

Readopted Eff. August 1, 2022.

1 15A NCAC 07M .0801 is readopted as published in 34:09 NCR 764 as follows:
2

3 **SECTION .0800 - COASTAL WATER QUALITY POLICIES**

4
5 **15A NCAC 07M .0801 DECLARATION OF GENERAL POLICIES**

6 (a) The waters of the coastal area are a valuable natural and economic resource of statewide significance. Traditionally
7 these waters have been used for such activities as commercial and recreational fishing, swimming, hunting,
8 recreational boating, and commerce. These activities depend upon the quality of the waters. Due to the importance
9 of these activities to the quality of life and the economic well-being of the coastal area, it is important to ensure a level
10 of water quality which will allow these activities to continue and prevent further deterioration of water quality. It is
11 hereby declared that no land or water use shall cause the degradation of water quality so as to impair traditional uses
12 of the coastal waters. To the extent that statutory authority permits, the Coastal Resources Commission will take a
13 lead role in coordinating these activities.

14 (b) It is further recognized that the preservation and enhancement of water quality is a complex issue. The
15 deterioration of water quality in the coastal area has many causes. The inadequate treatment of human wastes, the
16 improper operation of boats and their sanitation devices, the creation of increased runoff by covering the land with
17 buildings and pavement and removing natural vegetation, the use of outdated practices on fields and woodlots and
18 many other activities impact the water quality. Activities outside the coastal area also impact water quality in the
19 coastal area. Increases in population will continue to add to the water quality problems if care is not taken in the
20 development of the land and use of the public trust waters.

21 (c) Protection of water quality and the management of development within the coastal area is the responsibility of
22 many agencies. It is hereby declared that the general welfare and public interest require that all state, federal and local
23 agencies coordinate their activities to ensure optimal water quality.

24
25 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. s. 1453(12);*
26 *Eff. November 1, 1985;*
27 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .0802 is readopted as published in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .0802 POLICY STATEMENTS**

4 (a) All of the waters of the state within the coastal area have a potential for uses which require optimal water quality.
5 Therefore, at every possible opportunity, existing development adjacent to these waters shall be upgraded to reduce
6 discharge of pollutants.

7 (b) Basinwide management to control sources of pollution both within and outside of the coastal area which will
8 impact waters flowing into the rivers and sounds of the coastal area is necessary to preserve the quality of coastal
9 waters.

10 (c) The adoption of methods to control development so as to eliminate harmful runoff which may impact the sounds
11 and rivers of the coastal area and the adoption of best management practices to control runoff from undeveloped lands
12 is necessary to prevent the deterioration of coastal waters.

13

14 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. s. 1453(12);*

15 *Eff. November 1, 1985;*

16 *Amended Eff. October 1, 1988;*

17 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0902 Policy Statements

DEADLINE FOR RECEIPT: July 14, 2022

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:

(a), Page 1, Lines 4: What does the agency mean by “access corridors”? What is a “special use airspace designation”? Is this a term used in a statute, code, or federal regulation to which the agency can cite?

(a), Page 1, Line 6: “Unobstructed access” for who to what?

(a), Page 1, Line 7: “Which “communication and radar services”?

(b), Page 1, Lines 9-13: Paragraph (b) reads like a broad policy statement rather than substantive requirements. What was the agency’s intention? What is an “aviation related project”? “To the maximum extent practicable” is subjective and ambiguous. The agency either needs to define its criteria or remove the language. “Access shall be provided”, to whom? By subsequent Rule?

History Note, Page 1, Line 15: Should G.S. 113A-124(c) be cited as authority?

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

William W. Peaslee
Commission Counsel
Date submitted to agency: July 5, 2022

1 15A NCAC 07M .0902 is readopted as published in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .0902 POLICY STATEMENTS**

4 (a) It is the policy of the State of North Carolina that access corridors free of special use airspace designations shall
5 be preserved along the length of the barrier islands and laterally at intervals not to exceed 25 miles to provide
6 unobstructed access both along the coastline and from inland areas to the coast. Such access corridors shall extend
7 from the surface to an altitude of 6000 feet above sea level except where communication and radar services allow
8 positive aircraft control at lower altitudes.

9 (b) Development of aviation-related projects and associated airspace management practices shall, to the maximum
10 extent practicable, facilitate use of aircraft by local, state and federal government agencies for purposes of resource
11 management, law enforcement and other activities related to the public health, safety and welfare. In any case, access
12 to restricted areas shall be provided on a periodic basis for routine enforcement flights and access shall be provided
13 on an emergency basis when required to respond to an immediate threat to public health and safety.

14

15 *History Note: Authority G.S. 113A-102(b); 113A-107;*

16

Eff. March 1, 1990;

17

Readopted Eff. August 1, 2022.

1 15A NCAC 07M .1001 is readopted as published in 34:09 NCR 764 as follows:

2

3 **SECTION .1000 - POLICIES ON WATER AND WETLAND BASED TARGET AREAS FOR MILITARY**
4 **TRAINING ACTIVITIES**

5

6 **15A NCAC 07M .1001 DECLARATION OF GENERAL POLICY**

7 The use of water and wetland-based target areas for military training purposes may result in adverse impacts on coastal
8 resources and on the exercise of public trust rights. The public interest requires that, to the maximum extent
9 practicable, use of such targets not infringe on public trust rights, cause damage to public trust resources, violate
10 existing water quality standards or result in public safety hazards.

11

12 *History Note: Authority G.S. 113A-102(b); 113A-107;*

13

Eff. March 1, 1990;

14

Readopted Eff. August 1, 2022.

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .1002 Policy Statements

DEADLINE FOR RECEIPT: July 14, 2022

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:

(a), Page 1, Lines 4-6: Paragraph (a) reads like a broad policy statement rather than substantive requirements. What was the agency's intention? What is the agency's authority with regard to public trust waters subject to surface water restrictions pursuant to 33 USCS 3? Who would establish the times appropriate for harvest and how would that be determined?

(b), Page 1, Lines 7-8: Who establishes "the area of restricted waters" and what is the agency's authority?

(c), Page 1, Lines 9-10: Who is required to test the waters? If the military, what is the agency's authority? If the agency, why does the agency need a rule?

History Note, Page 1, Line 15: Should G.S. 113A-124(c) be cited as authority?

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

1 15A NCAC 07M .1002 is readopted as published in #:# NCR # as follows:

2

3 **15A NCAC 07M .1002 POLICY STATEMENTS**

4 (a) It is the policy of the State of North Carolina that all public trust waters subject to surface water restrictions
5 pursuant to 33 USCS 3 for use in military training shall be opened to commercial fishing at established times
6 appropriate for harvest of the fisheries resources within those areas.

7 (b) Where laser weaponry is used, the area of restricted surface waters shall be at least as large as the recommended
8 laser safety zone.

9 (c) Water quality shall be tested periodically in the surface water restricted areas surrounding such targets and results
10 of such testing shall be reported to the Department.

11

12 *History Note: Authority G.S. 113A-102(b); 113A-107;*

13 *Eff. March 1, 1990;*

14 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .1101 is readopted as published in 34:09 NCR 764 as follows:

2
3 **SECTION .1100 - POLICIES ON BENEFICIAL USE AND AVAILABILITY OF MATERIALS**
4 **RESULTING FROM THE EXCAVATION OR MAINTENANCE OF NAVIGATIONAL CHANNELS**

5
6 **15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY**

7 Certain dredged material disposal practices may result in removal of material important to the sediment budget of
8 ocean and inlet beaches. This may, particularly over time, adversely impact important natural beach functions
9 especially during storm events and may increase long term erosion rates. Ongoing channel maintenance requirements
10 throughout the coastal area also lead to the need to construct new or expanded disposal sites as existing sites fill. This
11 is a financially and environmentally costly undertaking. In addition, new sites for disposal are increasingly harder to
12 find because of competition from development interests for suitable sites. Therefore, it is the policy of the State of
13 North Carolina that material resulting from the excavation or maintenance of navigation channels be used in a
14 beneficial way wherever practicable.

15
16 *History Note: Authority G.S. 113A-107;*

17 *Eff. October 1, 1992;*

18 *Readopted Eff. August 1, 2022.*

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .1102 Policy Statements

DEADLINE FOR RECEIPT: July 14, 2022

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:

(a), Page 1, Lines 4-7: Paragraph (a) reads like a broad policy statement rather than substantive requirements. What was the agency's intention? How is dredged material determined to be "beach quality"? What are the criteria and who makes this determination? What is an "active nearshore system"? What is an "inlet shoal system"? Who makes the determination with regard to practicability and what criteria is used? What does the agency consider a "shallow active nearshore"? Who determines whether dredged material is "environmentally acceptable" and what criteria is used in making this determination?

(b), Page 1, Lines 8-9: What substantive requirement is being placed on who?

(c), Page 1, Lines 10-11: What material is what disposal sites? Who determines whether is a use is "beneficial" and "consistent with Paragraph (a)", and using what criteria?

(d), Page 1, Lines 12-13: This Paragraph is vague and ambiguous.

History Note, Page 1, Line 15: Should G.S. 113A-124(c) be cited as authority?

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

William W. Peaslee
Commission Counsel
Date submitted to agency: July 5, 2022

1 15A NCAC 07M .1102 is readopted as published in 34:09 NCR 765 as follows:

2

3 **15A NCAC 07M .1102 POLICY STATEMENTS**

4 (a) Clean, beach quality material dredged from navigation channels within the active nearshore, beach, or inlet shoal
5 systems must not be removed permanently from the active nearshore, beach or inlet shoal system unless no practicable
6 alternative exists. Preferably, this dredged material will be disposed of on the ocean beach or shallow active nearshore
7 area where environmentally acceptable and compatible with other uses of the beach.

8 (b) Research on the beneficial use of dredged material, particularly poorly sorted or fine grained materials, and on
9 innovative ways to dispose of this material so that it is more readily accessible for beneficial use is encouraged.

10 (c) Material in disposal sites not privately owned shall be available to anyone proposing a beneficial use not
11 inconsistent with Paragraph (a) of this Rule.

12 (d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is
13 in the public interest and shall be encouraged at every opportunity.

14

15 *History Note: Authority G.S. 113A-107;*

16 *Eff. October 1, 1992;*

17 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .1201 is readopted as published in 34:09 NCR 765 as follows:
2

3 **SECTION .1200 - POLICIES ON OCEAN MINING**

4
5 **15A NCAC 07M .1201 DECLARATION OF GENERAL POLICY**

6 (a) The Atlantic Ocean is designated a Public Trust Area Of Environmental Concern (AEC) out to the three-mile state
7 jurisdictional boundary; however, the ocean environment does not end at the state/federal jurisdictional boundary.
8 Mining activities impacting the federal jurisdiction ocean and its resources can, and probably would, also impact the
9 state jurisdictional ocean and estuarine systems and vice-versa. Therefore, it is state policy that every avenue and
10 opportunity to protect the physical ocean environment and its resources as an integrated and interrelated system will
11 be utilized.

12 (b) The usefulness, productivity, scenic, historic and cultural values of the state's ocean waters will receive the greatest
13 practical degree of protection and restoration. No ocean mining shall be conducted unless plans for such mining
14 include reasonable provisions for protection of the physical environment, its resources, and appropriate reclamation
15 or mitigation of the affected area as set forth and implemented under authority of the Mining Act (G.S. 74-48) and
16 Coastal Area Management Act (G.S. 113A-100).

17 (c) Mining activities in state waters, or in federal waters insofar as the activities affect any land, water use or natural
18 or historic resource of the state waters, shall be done in a manner that provides for protection of those resources and
19 uses. The siting and timing of such activities shall be consistent with established state standards and regulations and
20 shall comply with applicable local land use plan policies, and AEC use standards.

21
22 *History Note: Authority G.S. 113A-102; 113A-103; 113A-107;*
23 *Eff. August 1, 1998;*
24 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07M .1202 is readopted as published in 34:09 NCR 765 as follows:

2

3 **15A NCAC 07M .1202 POLICY STATEMENTS**

4 (a) Impacts from mining activities involving dredging, blasting, or other methods of excavation, spoil disposal, or
5 construction of related structures that can be expected to affect the physical ocean environment or its resources shall
6 be identified and minimized. Any significant unavoidable damages from these actions shall be mitigated under the
7 procedures set out in 15A NCAC 7M .0700.

8 (b) Damage to or interference with existing or traditional public trust uses, such as fishing, navigation, or access to
9 public trust areas, or areas with high biological, historical archaeological, or recreational value are activities that
10 significantly affect land or water uses or natural resources of the coastal area. Damage to or interference with existing
11 or traditional public trust uses shall be minimized.

12 (c) Offshore reefs, rock outcrops, hard bottom areas, and other significant living resource habitat shall be avoided
13 unless it can be demonstrated that the mining activity will not significantly adversely affect these resources, land or
14 water uses or the natural resources of the coastal area, or unless their existing biological functions can be sustained
15 through mitigation.

16

17 *History Note: Authority G.S. 113A-102; 113A-107;*

18 *Eff. August 1, 1998;*

19 *Readopted Eff. August 1, 2022.*