

## RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0501, 15A NCAC 07H .0502, 15A NCAC 07H .0503, 15A NCAC 07H .0504, 15A NCAC 07H .0505, 15A NCAC 07H .0506, 15A NCAC 07H .0507, 15A NCAC 07H .0509, and 15A NCAC 07H .0510 (Liebman); 15A NCAC 07M .0201; 15A NCAC 07M.0202; 15A NCAC 07M 0401; 15A NCAC 07M.0701; 15A NCAC 07M, .0801, 15A NCAC 07M.0802; 15A NCAC 07M .1001; and 15A NCAC 07M .1101 (Peaslee).

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*G.S. 150B-19.1(a)(1) states, "An agency may adopt only **rules (emphasis added)** that are expressively authorized by federal and State law and that are necessary to serve the public interest."*

*Each of the above captioned Rules do not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, each of the above captioned Rules do not meet the definition of a "Rule" pursuant to G.S.150B-2(8a).*

*As each of the above captioned rules fail to meet the definition of a "Rule", the agency lacks statutory authority to adopt them.*

*The adoption of each of the above captioned Rules is not in accordance with Article 2A of G.S.150B as only "Rules" can be adopted. Lastly, as each of the above captioned Rules is not a "Rule" it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

William W. Peaslee  
Commission Counsel

*Assuming arguendo that that one or more of the above captioned Rules meets the definition of a "Rule", each of the above captioned Rules, as written, is unclear and ambiguous, pursuant to G.S. 150B-21.9(a)(2).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07H .0501, 15A NCAC 07H .0502, 15A NCAC 07H .0503, 15A NCAC 07H .0504, 15A NCAC 07H .0505, 15A NCAC 07H .0506, 15A NCAC 07H .0507, 15A NCAC 07H .0509, 15A NCAC 07H .0510; 15A NCAC 07M .0201, 15A NCAC 07M .0202, 15A NCAC 07M .0401, 15A NCAC 07M.0701, 15A NCAC 07M .0801, 15A NCAC 07M .0802, 15A NCAC 07M .1001, AND 15A NCAC 07M .1101.*

William W. Peaslee  
Commission Counsel

**§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.

- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07M .0201 is readopted as published in 34:09 NCR 764 as follows:  
2

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.

12  
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**  
4

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.

28  
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.*

## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0403

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority (in part)
  - Unclear or ambiguous
  - Unnecessary (in part)
  - Failure to comply with the APA (in part)
- Extend the period of review

COMMENT:

*The Rule is riddled with such ambiguous terms as “sufficient”, “significant”, “relevant”, “reasonable”, “necessary”, and “practicable” that it is difficult to discern whether the agency intends the Rule to be a broad policy statement of goals or substantive requirements upon the regulated public.*

*Further, the agency uses phrases such as “local resources”, “earliest feasible stage”, “shoreline areas”, “energy facilities”, “petroleum facilities”, “Oil Spill Resource Plan”, and “areas of high biological or recreational value” without definition or reference to any statute or code, or supplying criteria upon which to evaluate the same, such that the regulated public, and perhaps the agency employees, cannot determine objectively what the law is.*

*G.S. 150B-19.1(a)(1) states, “An agency may adopt only **rules (emphasis added)** that are expressly authorized by federal and State law and that are necessary to serve the public interest.”*

*To the extent that 15A NCAC 07M .0403 contains broad policy statements, it does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, it does not meet the definition of a “Rule” pursuant to G.S.150B-2(8a).*

*To the extent that 15A NCAC 07M .0403 does not meet the definition of a “Rule”, the agency lacks statutory authority to adopt it. Further, the adoption of 15A NCAC 07M .0403 was not in accordance*

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Commission Counsel

*with Article 2A of G.S.150B as only "Rules" can be adopted. Lastly, to the extent that 15A NCAC 07M .0403 is not a "Rule" it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

*To the extent that the Rule imposes any substantive requirements, 15A NCAC 07M .0403, as written, is unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07M .0403.*

William W. Peaslee  
Commission Counsel

**§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance

with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

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

2  
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.

27  
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.*

## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0503

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority (in part)
  - Unclear or ambiguous
  - Unnecessary (in part)
  - Failure to comply with the APA (in part)
- Extend the period of review

COMMENT:

*The Rule is riddled with such ambiguous phrases as "the Commission will establish", "the Commission hereby establishes guidelines", "the Commission will advise", and "should be" that it is difficult to discern whether the agency intends the Rule to be a broad policy statement or substantive requirements upon the regulated public.*

*Further, the agency uses phrases such as "applicable policies and standards", "guidelines", "sound coastal engineering standards", "hazardous areas", "a safe and sound manner", "areas desirable for public access or use", and "adequate" without definition or reference to any statute or code, or supplying criteria upon which to evaluate the same, such that the regulated public, and perhaps the agency employees, cannot determine objectively what the law is.*

*To the extent that 15A NCAC 07M .0503 contains broad policy statements, it does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, it does not meet the definition of a "Rule" pursuant to G.S.150B-2(8a).*

*To the extent that 15A NCAC 07M .0503 is not a "Rule", the agency lacks statutory authority to adopt it. Further, the adoption of 15A NCAC 07M .0503 was not in accordance with Article 2A of G.S.150-B as only "Rules" can be adopted. Lastly, to the extent that 15A NCAC 07M .0503 is not a "Rule" it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

William W. Peaslee  
Commission Counsel

*To the extent that the Rule imposes substantive requirements, 15A NCAC 07M .0503, as written, is unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07M .0503.*

**§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance

with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

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

2  
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.*

## RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0602

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - X Unnecessary
    - Failure to comply with the APA
  - Extend the period of review

COMMENT:

*The definitions contained in 15A NCAC 07M .0602 were previously defined by the General Assembly in G.S. 113A-103. The definitions contained in 15A NCAC 07M .0602 are the same as the definitions in G.S. 113A-103. As the terms are defined by statute, 15A NCAC 07M .0602 is unnecessary pursuant to G.S. 150B-21.9(a)(3).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07M .0602.*

William W. Peaslee  
Commission Counsel

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

**§ 113A-103. Definitions.**

As used in this Article:

- ...
- (1a) "Boat" means a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.
- ...
- (5a) "Floating structure" means any structure, not a boat, supported by a means of floatation, designed to be used without a permanent foundation, which is used or intended for human habitation or

commerce. A structure shall be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be considered a floating structure when its means of propulsion has been removed or rendered inoperative.

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.*

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.*

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.*



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.*

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.*

## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .1201

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*G.S. 150B-19.1(a)(1) states, "An agency may adopt only **rules (emphasis added)** that are expressively authorized by federal and State law and that are necessary to serve the public interest."*

*15A NCAC 07M .1201 is a "Declaration of General Policy" which does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, it does not meet the definition of a "Rule" pursuant to G.S.150B-2(8a).*

*As 15A NCAC 07M .1201 is not a "Rule", the agency lacks statutory authority to adopt it. Further, the adoption of 15A NCAC 07M .1201 was not in accordance with Article 2A of G.S.150B as only "Rules" can be adopted. Lastly, as 15A NCAC 07M .1201 is not a "Rule" it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

*There are two arguably substantive sentences in the Rule:*

*"NO OCEAN MINING SHALL BE CONDUCTED UNLESS PLANS FOR SUCH MINING INCLUDE REASONABLE PROVISIONS FOR PROTECTION OF THE PHYSICAL ENVIRONMENT, ITS RESOURCES, AND APPROPRIATE RECLAMATION OR MITIGATION OF THE AFFECTED AREA AS SET FORTH AND*

William W. Peaslee  
Commission Counsel

IMPLEMENTED UNDER AUTHORITY OF THE MINING ACT (G.S. 74-48) AND COASTAL AREA MANAGEMENT ACT (G.S. 113A-100).”

AND

“THE SITING AND TIMING OF SUCH ACTIVITIES SHALL BE CONSISTENT WITH ESTABLISHED STATE STANDARDS AND REGULATIONS AND SHALL COMPLY WITH APPLICABLE LOCAL LAND USE PLAN POLICIES, AND AEC USE STANDARDS.”

*Both sentences appear to require adherence to statutes or rules which are already applicable to the regulated public. In short, it is the same as passing a law which states that existing law must be obeyed. The sentences are therefore duplicative, and unnecessary pursuant G.S. 150B-21.9(a)(3).*

*Assuming arguendo that 15A NCAC 07M .1201 meets the definition of a “Rule”, and the above quoted sentences are necessary, 15A NCAC 07M .1201, as written, is unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07M .1201.*

William W. Peaslee  
Commission Counsel

**§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.

- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)



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.*

## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .1202

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority (in part)
  - Unclear or ambiguous
  - Unnecessary (in part)
  - Failure to comply with the APA (in part)
- Extend the period of review

COMMENT:

*G.S. 150B-19.1(a)(1) states, "An agency may adopt only **rules (emphasis added)** that are expressly authorized by federal and State law and that are necessary to serve the public interest."*

*The Rule is riddled with such ambiguous terms as "significant", "unavoidable", "minimized", "adversely" and "interference" that it is difficult to discern whether the agency intends the "Policy Statements" to be a broad policy statement of goals or substantive requirements upon the regulated public.*

*Further, the agency uses phrases such as "areas of high biological or recreational value" and "shall be minimized" without definition or reference to any statute or code, or supplying criteria upon which to evaluate the same, such that the regulated public, and perhaps the agency employees, cannot determine objectively what the law is.*

*To the extent that 15A NCAC 07M .1202 contains broad policy statements, it does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, it does not meet the definition of a "Rule" pursuant to G.S. 150B-2(8a).*

William W. Peaslee  
Commission Counsel

*To the extent that 15A NCAC 07M .1202 is not a "Rule", the agency lacks statutory authority to adopt it. Further, the adoption of 15A NCAC 07M .1202 was not in accordance with Article 2A of G.S.150-B as only "Rules" can be adopted. Lastly, to the extent that 15A NCAC 07M .1202 is not a "Rule" it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

*To the extent that the Rule imposes substantive requirements, 15A NCAC 07M .1202, as written, is unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07M .1202.*

**§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.

(5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

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.*