

Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, September 7, 2022 2:04 PM
To: Peaslee, William W; Duke, Lawrence; Liebman, Brian R
Cc: Burgos, Alexander N; Lopazanski, Mike; Lucasse, Mary L; Willis, Angela; Goebel, Christine A
Subject: RE: CRC 15A NCAC 07M

Bill,

The agency is requesting to withdraw 15A NCAC 07M .0602.

Mary Lucasse, Counsel to the CRC will be attending remotely. Please have a link sent to her as she plans to speak as needed on any of the Coastal Resources Commission's rules listed on the RRC agenda.

Thanks.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, September 6, 2022 10:18 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: CRC 15A NCAC 07M

Good morning Jennifer,

Please be advised that I am withdrawing my recommendation for objection to 15A NCAC 07M .0602; however, "boat" in (a) should be ""boat"".

Does the agency still wish to withdraw the rule?

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0402

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

*With regard to “coastal resources”, the Coastal Area Management Act refers to the State’s “costal lands and waters” (GS 113A-102) as NC’s most valuable. It continues that among the most biologically productive regions of this State and of the nation are coastal and estuarine waters and marshlands. CAMA further states that the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States. The **Coastal Resources** Commission is given the authority to provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values. To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations; and to insure the orderly and balanced*

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

use and preservation of our coastal resources on behalf of the people of North Carolina and the nation.

“Activities” has been clarified.

“G.S. 113A-103(2)” added.

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

Barrier Island is term familiar to the regulated public.

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

Clarified.

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

Deleted.

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

Deleted.

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

The term “significant adverse impact” has specific meaning when used in context project reviews and is known to the regulated public and sister agencies. The term of art is used through out the CRC rules and has been for 40 years.

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

Real property.

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

This would be a catch-all for information that is not typical and may not be included in a standard form or application, but necessary for DCM and other review agencies to review the project. Individual review agencies may also want to see additional information required by other agencies.

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

Clarified.

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

Clarified.

(b), Page 2, Lines 17-19: This is ambiguous and subjective. What is the standard of size, magnitude, and impacts? Who determines this? What does the agency mean by “affects”? Would a residential solar panel in the coastal area “affect” or have the

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Date submitted to agency: July 5, 2022

“potential to affect” the “land”? Definitions by their nature should be finite, not subjective. They should be clear and unambiguous. Consider simply listing the type of facilities rather than leaving it open ended and subject to the caprices of the agency.

Clarified to be consistent with G.S 113A-19.2.

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

Deleted “capable” and added statute references defining facilities.

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

Terminal and petroleum products are defined by the NC Oil Pollution and Hazardous Substance Control Act (G.S. 143-215.96). Reference added.

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

Deleted.

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

This language is included in CAMA (G.S. 113A-119.2).

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

This is familiar to the regulated public and is cited in CAMA (G.S 113A-119.2).

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

Development is defined in CAMA (G.S. 113A-103(5)(a), 113A-119.2 as well as 15A NCAC 05H .0100.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

This is a policy which pairs with 113A-103(5a) Floating Structure. The terms you question are found in 113A-103(1a) Boat, 113A-103(2) Coastal Area, 113A-119.2(a)(2) Discharge; 113A-129.1(a) Public Trust Rights; 113A-113 AECs Public Trust Waters; 113A-134.2 Public Trust Resources same as 113-131(e); 113A-134.2(2) Public Trust rights same as G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.); 113A-113(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution.

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

113A-103; 113A-113(5)

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

Permitted marinas – 113A-107(a) gives the Commission authority to establish State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Land and water areas addressed in the State guidelines may include underground areas and resources, and airspace above the land and water, as well as the surface of the land and surface waters. Such guidelines shall be used in the review of applications for permits issued pursuant to this Article and for review of and comment on proposed public, private and federal agency activities that are subject to review for consistency with State guidelines for the coastal area. Marinas are permitted pursuant to 15A NCAC 7H .0208(b)(5).

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

The Commission does not regulate floating structures outside the Coastal Area.

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

113A-118 Permit Required is the Commission authority for requiring a permit for any development in an Area of Environmental Concern.

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

113A107(b) see above regarding State guidelines for development in the coastal area. Deleted repealed citation.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

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

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0702 Definitions

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

Done.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

Mitigation projects will involve dredging and filling. Added citation 113-229 Dredge and Fill Law. Requires a permit for any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department.

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

Deleted reasonable and prudent.

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

Deleted close proximity.

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

The Division disagrees that State or Federal roadways, navigation projects, ports and public access project are not descriptive. The regulated community, primarily NC DOT is familiar with this terminology/categories and has been since 1985.

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

Added comma.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

*Clarified "access to public trust resources".
Deleted available.
Deleted significant.
Clarified that it is consistent with the local land use plan.*

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

*(b), Page 1, Line 27: Is there a citation to the "permit process time period"?
Cited.*

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

*(a)(3) Page 1, Line 10: Is there a size requirement to the "area"? What are the criteria for determining if an "area" is "desirable"?
Mitigation projects can vary from acres to square feet. Regarding the preferential hierarchy, "desirable" is referring to the ecological function being replaced or mitigated. Depending on the project replacement of salt marsh may be preferred over freshwater marsh.*

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

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

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

Acquisition of a degraded area (ditched and drained) would not be considered high quality area. This would be determined during individual project proposals.

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

Clarified.

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

Clarified.

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

Clarified.

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

Deleted.

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

Clarified.

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

Deleted.

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

Deleted.

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

Denials of both would be subject to the appeals process.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

113A-113 gives the Commission authority to establish Areas of Environmental Concern, specifically 113A-133(b)(2) for "Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;". Also 113A-113(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution."

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

The Secretary of the Army under 33 US Code 3.

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

The authority under 113A-113(5).

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

Added citation.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Beach quality material is compatible with the standards described in 15a NCAC 7H .0312. Active nearshore system, shallow active nearshore and inlet shoal system are marine system terms familiar to the regulated community.

(b), Page 1, Lines 8-9: What substantive requirement is being placed on who? Innovative measures proposed by project applicant are considered during the permitting process.

(c), Page 1, Lines 10-11: What material is what disposal sites? Who determines whether is a use is "beneficial" and "consistent with Paragraph (a)", and using what criteria? Dredge material is often store in disposal sites sometimes referred to as dredged spoil islands. These areas are often state-owned. Use of this material would be coordinated with the Dept or Administration during the permitting process. Dredged material placed on beaches are required to meet the compatibility standards of 15A NCAC 7H .0312.

*(d), Page 1, Lines 12-13: This Paragraph is vague and ambiguous.
Citation added 113A-126*

*History Note, Page 1, Line 15: Should G.S. 113A-124(c) be cited as authority?
Added citation for Dredge and Fill GS 113-229.*

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

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

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

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

2

3

SECTION .0200 - SHORELINE EROSION POLICIES

4

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 shall** 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. October 1, 2022.

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

2
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 impacts** to North Carolina's natural heritage. All means **should shall** be taken to identify
6 and develop response measures that will not adversely affect estuarine and marine productivity. The public right to
7 use and enjoy the ocean beaches **must shall** be protected. The protected uses include traditional recreational uses (such
8 as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach
9 rescue services. Private property rights to oceanfront properties including the right to protect that property in ways
10 that are consistent with public rights **should shall** 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 an** alternative to the loss or massive relocation of oceanfront development. **In light of this experience, beach**
19 **Beach** 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 Hazard** and Public Trust Waters Areas of Environmental Concern
25 and the 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, bulldozing should**
37 **may** be allowed, but only to the extent necessary to protect property for a short period of time until threatened
38 structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary
39 stabilization measures 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~~ shall consider innovative institutional programs and scientific research that will
5 provide for effective management of coastal shorelines. The development of innovative measures that will lessen or
6 slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties is
7 encouraged.

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

17 (i) The ~~state State will~~ shall promote education of the public on the dynamic nature of the coastal zone and on effective
18 measure to cope with ~~our~~ ever changing ~~shorelines, shorelines of the coastal area.~~

19
20 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*
21 *Eff. March 1, 1979;*
22 *Amended Eff. March 1, 1985;*
23 *RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;*
24 *Amended Eff. March 1, 1992;*
25 *RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;*
26 *Amended Eff. May 4, 1995;*
27 *Readopted Eff. October 1, 2022.*

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

2
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. October 1, 2022.*

1 15A NCAC 07M .0402 is readopted as published with changes in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0402 DEFINITIONS**

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

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

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

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

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

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

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

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

34 (5) a discussion an analysis of potential significant adverse impacts on recreational uses and scenic,
35 archaeological and historic resources;

36 (6) a discussion an analysis of potential risks to human life or property;

- 1 (7) ~~a discussion~~ an analysis of the impacts on the human environment including noise, vibration and
- 2 visual impacts;
- 3 (8) ~~a discussion~~ an analysis of the procedures and time needed to secure an energy facility in the event
- 4 of severe weather conditions, such as extreme wind, currents and waves due to northeasters and
- 5 hurricanes;
- 6 (9) other specific data necessary required for the various state and federal agencies and commissions
- 7 with jurisdiction to evaluate the consistency of the proposed project with relevant standards and
- 8 guidelines;
- 9 (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and
- 10 related structures. The plan shall include an estimate of the cost to decommission and remove the
- 11 energy facility including a discussion of the financial instrument(s) used to provide for the
- 12 decommissioning and the removal of the structures that comprise the energy facility. The plan shall
- 13 also include a proposed description of the condition of the site once the energy facility has been
- 14 decommissioned and removed.
- 15 (11) ~~a specific demonstration~~ an analysis that the proposed project is consistent with relevant local land
- 16 use ~~plans. plans and with guidelines governing land uses in AECs.~~

17 Any An impact ~~assessment~~ analysis for a proposed major energy facility shall include ~~a discussion~~ of the items

18 described in Subparagraphs (a)(1) through (11) of this Rule for the associated energy exploration or development

19 activities related to exploration or development of OCS resources and other energy facilities. including all foreseeable

20 assessments of resource potential, including the gathering of scientific data, exploration wells, and any delineation

21 activities that are likely to follow development, production, maintenance and decommissioning.

22 (b) "Major energy facilities" are those energy ~~facilities~~ facilities, including those described in G.S. 113A-119.2(3),

23 which because of their size, magnitude or scope of impacts, have the potential to ~~affect~~ negatively impact any land or

24 water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include

25 include, but are not necessarily limited to, the following:

- 26 (1) Any facility capable of refining petroleum ~~products;~~ consistent with G.S. 143-215.77;
- 27 (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum
- 28 products or synthetic gas gas; as defined in G.S 143-215.96;
- 29 (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- 30 (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- 31 (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other
- 32 equipment necessary for the operation of a wind generating facility that cumulatively, with any other
- 33 wind energy facility whose turbines are located within one-half mile of one another, are capable of
- 34 generating three megawatts or larger;
- 35 (6) Thermal energy generation;
- 36 (7) Major pipelines Pipelines 12 inches or more in diameter that carry petroleum products or synthetic
- 37 gas;

1 (8) Structures, including drillships and floating platforms ~~and structures relocated from other states or~~
2 ~~countries~~, located in offshore waters for the purposes of energy exploration, development or
3 production; and

4 (9) Onshore support or staging facilities related to offshore energy exploration, development or
5 production.

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

8

9 *History Note:* Authority G.S. 113A-102(b); 113A-107; ~~113A-119.2~~; 113A-124;

10 *Eff. March 1, 1979;*

11 *Amended Eff. October 1, 1988;*

12 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*

13 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*

14 *Amended Eff. March 1, 2011; August 1, 2000;*

15 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07M .0403 POLICY STATEMENTS**

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

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

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

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

33 (e) The scenic and visual qualities of coastal areas shall be considered and protected as **important** public **resources**
34 **consistent with 113A-1-2(b)(4)(a). resources.** Energy development shall be sited and designed to provide maximum
35 protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural
36 landforms.

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

- 3 (1) Activities that ~~could may~~ result in significant adverse impacts on ~~coastal resources, resources of the~~
4 ~~coastal area,~~ including marine and estuarine resources and wildlife resources, as defined in G.S.
5 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the
6 coastal area shall be ~~avoided avoided. unless site specific information demonstrates that each such~~
7 ~~activity will result in no significant adverse impacts on the use of public trust waters and adjacent~~
8 ~~lands or coastal resources;~~
- 9 (2) For petroleum facilities, ~~necessary~~ data and information required ~~by the state~~ for ~~state State~~ permits
10 and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum
11 release or spills, evaluate possible trajectories, and enumerate response and mitigation measures
12 employing the best available technology to be followed in the event of a release or spill. The
13 information ~~must shall~~ demonstrate that the potential for petroleum release or spills and ensuing
14 damage to coastal resources has been minimized and shall factor environmental conditions, currents,
15 winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. ~~For This~~
16 ~~same data and information shall be required for~~ facilities requiring an Oil Spill Response ~~Plan; Plan;~~
17 ~~this information shall be included in such a plan;~~
- 18 (3) Dredging, spoil disposal and construction of ~~related~~ structures that are likely to have significant
19 adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be
20 ~~avoided; minimized, and any unavoidable actions of this sort shall minimize damage to the marine~~
21 ~~environment;~~
- 22 (4) ~~Damage to or interference with Significant adverse impacts to~~ existing or traditional uses, such as
23 fishing, navigation and access to public trust areas, and areas with high biological or recreational
24 value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be ~~avoided; avoided~~
25 ~~to the extent that such damage or interference is likely to have significant adverse impacts on the~~
26 ~~use of public trust waters and adjacent lands or coastal resources;~~
- 27 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
28 shall be avoided ~~to the extent that damage to such structures resulting from geological phenomena~~
29 ~~is likely to if the siting of structures will~~ have significant adverse impacts on the use of public trust
30 waters, adjacent lands or coastal resources;
- 31 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
32 extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated ~~sufficiently~~
33 ~~in advance of the commencement of severe weather~~ to ensure that significant adverse impacts on
34 the use of public trust waters, adjacent lands and coastal ~~resources; resources shall be avoided;~~
- 35 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;

- 1 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
2 environmental or natural resources of more than local significance, as defined in G.S. 113A-
3 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- 4 (9) ~~No energy~~ Energy facilities shall ~~not~~ be sited in areas where they pose a threat to the integrity of the
5 facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a
6 history of overwash or inlet formation, and ~~areas in the vicinity of existing inlets; Inlet Hazard Areas~~
7 ~~identified in 15A NCAC 7H .0304;~~
- 8 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
9 areas shall be avoided:
- 10 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
11 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
12 spawning areas and essential fish habitat areas of particular concern as designated by the
13 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic
14 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
15 migratory bird routes;
- 16 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
17 for registration or dedication by the North Carolina Natural Heritage Program;
- 18 (C) crossings of streams, rivers, and lakes except for existing ~~readily accessible~~ corridors;
- 19 (D) anchorage areas and port areas;
- 20 (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- 21 (F) ~~dump sites; Ocean Dredged Material Disposal Sites;~~
- 22 (G) primary dunes and frontal dunes;
- 23 (H) established recreation or wilderness areas, such as federal, ~~state~~ State and local parks,
24 forests, wildlife ~~refuges; refuges and other areas used in a like manner;~~
- 25 (I) military air space, training or target area and transit lanes;
- 26 (J) cultural or historic sites of more than local significance; and
- 27 (K) segments of Wild and Scenic River System.
- 28 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
29 Nesting and spawning periods shall be avoided; and
- 30 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
31 existing prior to construction shall be restored ~~as soon as practicable~~ following abandonment. For
32 abandoned facilities outside the coastal area, habitat in the areas shall be restored to its
33 preconstruction state and functions ~~as soon as practicable~~ if the abandonment of the structure is
34 likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal
35 resources.
- 36

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

1 *Eff. March 1, 1979;*
2 *Amended Eff. April 1, 1992;*
3 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*
4 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*
5 *Amended Eff. February 1, 2011; August 1, 2000;*
6 *Readopted Eff. October 1, 2022.*

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

2

3

SECTION .0600 - FLOATING STRUCTURE POLICIES

4

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

6 It is hereby declared that the general welfare and public interest require that floating **structures, structures as defined**
7 **in G.S. 113A-103(5a)**, to be used for residential or commercial purposes not infringe upon the public trust rights nor
8 discharge into the public trust waters of the coastal area of North Carolina.

9

10 *History Note:* Authority *G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); **113A-103; 113A-***
11 ***113(5);***
12 ***113A-124(e)(5);***
13 *Eff. July 1, 1983;*
14 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07M .0603 is readopted as published with changes in 34:09 NCR 764 as follows:

2

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

4 (a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the
5 public trust waters of the coastal area except in permitted marinas.

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

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

9

10 *History Note:* Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-103; 113A-
11 119.2(a)(2)
12 113A-124(e)(5);
13 *Eff. July 1, 1983;*
14 Readopted Eff. October 1, 2022.

1 15A NCAC 07M .0701 is readopted as published **with changes** 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, enhancing,**
10 creating, or 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**
14 **permitted** and **unauthorized unpermitted** development. Proposals to mitigate losses of coastal resources shall be
15 considered only for **those projects development** shown to be in the public interest, as defined by the standards in **15A**
16 **NCAC 7M .0703. 15A NCAC 7M .0703, and only after all other reasonable means of avoiding or minimizing such**
17 **losses have been exhausted.**

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

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

2

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

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

7

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

9

Eff. January 1, 1984;

10

Readopted Eff. October 1, 2022.

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

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

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

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

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

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

35
36 *History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229

37 *Eff. January 1, 1984;*

38 *Amended Eff. September 1, 1985;*

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

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

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

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

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

29 (c) Mitigation proposals to offset losses of coastal resources associated with due to publicly funded projects shall be
30 reviewed by the staff Division of Coastal Management with the sponsoring agency and incorporated into the project
31 plans, by the State or federal agency.

32 (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions
33 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126. G.S.
34 113A-126 and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant
35 and the CRC.

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

1
2
3
4

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984;
Readopted Eff. October 1, 2022.

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

2

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

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

7

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

9

Eff. January 1, 1984;

10

Amended Eff. November 1, 1984;

11

Readopted Eff. October 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. October 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. October 1, 2022.*

1 15A NCAC 07M .1001 is readopted as published **with changes** 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 **and coastal** resources,
10 violate **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. October 1, 2022.

1 15A NCAC 07M .1002 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2

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

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

7 (b) Where laser weaponry is used, the area of restricted surface waters shall be at least as large as the recommended
8 laser safety **zone-zone under 33 USCS 3.**

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

11

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

13 *Eff. March 1, 1990;*

14 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07M .1101 is readopted as published **with changes** 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~~ **Dredged** material disposal practices may result in removal of material important to the sediment
8 budget of ocean and inlet beaches. This **activity may, particularly over time, may** adversely impact **important** natural
9 beach functions especially during storm events and may increase long term erosion rates. Ongoing channel
10 maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal
11 sites as existing sites fill. ~~This is a financially and environmentally costly undertaking.~~ In addition, new sites for
12 disposal are increasingly harder to find **because of due to** competition from development interests for suitable sites.
13 Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of
14 navigation channels be used in a beneficial way wherever practicable.

15
16 *History Note: Authority G.S. 113A-107; **113-229;***
17 *Eff. October 1, 1992;*
18 *Readopted Eff. October 1, 2022.*

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

2

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

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

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

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

12 (d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is
13 in the public interest and shall be **encouraged at every opportunity, consistent with G.S. 113A-18(f)**

14

15 *History Note:* Authority G.S. 113A-107; **113A-118(f); 113-229**

16

Eff. October 1, 1992;

17

Readopted Eff. October 1, 2022.

1 15A NCAC 07M .1201 is readopted as published **with changes** 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,~~ **may** also impact
9 the 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 **shall** be utilized.

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

17 (c) Mining activities in state waters, or in federal waters insofar as the activities **affect impact** any land, water use or
18 natural or historic resource of ~~the state~~ **public trust** waters, shall be done in a manner that provides for protection of
19 those resources and uses. The siting and timing of such activities shall be consistent with **established** state standards
20 and regulations and 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; **113-229;**
23 *Eff. August 1, 1998;*
24 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07M .1202 is readopted as published **with changes** 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 impact** the physical ocean environment or its resources
6 shall be identified and minimized. Any **significant** unavoidable damages from these actions shall be mitigated under
7 the 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 impact** land or water uses or natural resources of the coastal area. **Damage to or interference with**
11 **existing 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 impact** these resources,
14 land or water uses or the natural resources of the coastal area, or unless their existing biological functions can be
15 sustained through mitigation.

16

17 *History Note: Authority G.S. 113A-102; 113A-107; **113-229***

18 *Eff. August 1, 1998;*

19 *Readopted Eff. October 1, 2022.*

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Bill.Peaslee@oah.nc.gov

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From: Peaslee, William W
Sent: Friday, September 2, 2022 2:32 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Lucasse, Mary L; Willis, Angela <angela.willis@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: CRC 15A NCAC 07M

Thank you for your email.

Respectfully, the first two pages of the 48 pages in the link are not cover sheets for the 46 remaining pages. The 48 pages contain multiple objections. See pages 11, 19, 26, 35, and 42.

On July 7, 2022, I sent you each one of the staff opinions via email. The title to the email was "15 NCAC 07M RRC Staff Opinions". (Emphasis added) Attached to the email were five separate Word docs each containing one of the opinions.

I'm not sure what more I could have done but I am open to any suggestions.

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Recommendation to the RRC on page 2 does not list these two rules nor are they listed on page 1.

Jennifer Everett
DEQ Rulemaking Coordinator

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Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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Please see pages 19 and 26 in the link you provided.

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Subject: RE: CRC 15A NCAC 07M

I'm not seeing a staff opinion regarding 07M .0503 or .0602? <https://www.oah.nc.gov/media/13489/open>

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Subject: RE: CRC 15A NCAC 07M

Jennifer,

Thank you for your email.

I do not believe 15A NCAC 07M .0501 is pending before the RRC. Therefore it cannot be withdrawn pursuant to 26 NCAC 05 .0107(3). If I am wrong, please let me know.

26 NCAC 05 .0107(3) states, "An agency may withdraw a rule after filing with the RRC and before review by the RRC when: ... (3) there is no staff recommendation to object to the rule;

15A NCAC 07M .0503 and .0602 have staff opinions recommending objection. Accordingly, they cannot be withdrawn pursuant to 26 NCAC 05 .0107(3).

15A NCAC 07M .0902 however does not have an objection. Accordingly, it can be withdrawn.

As always, if you have any questions or concerns please do not hesitate to contact me.

I hope you have a pleasant Labor Day weekend.

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Subject: CRC 15A NCAC 07M

Bill,

Attached are the rewritten rules and responses to your technical change requests and objections regarding:

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0602, .0603, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0902, .1001, .1002, .1101, .1102, .1201, .1202

In addition, the CRC is requesting to withdraw 15A NCAC 07M .0501, .0503, .0602, and .0902 pursuant to 26 NCAC 05 .0107(3).

Jennifer Everett
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Burgos, Alexander N

Subject: FW: CRC 15A NCAC 07M

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, September 6, 2022 10:18 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>

Subject: RE: CRC 15A NCAC 07M

Good morning Jennifer,

Please be advised that I am withdrawing my recommendation for objection to 15A NCAC 07M .0602; however, "boat" in (a) should be ""boat"".

Does the agency still wish to withdraw the rule?

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Burgos, Alexander N

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Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, September 2, 2022 11:37 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: CRC 15A NCAC 07M

Jennifer,

Thank you for your email.

I do not believe 15A NCAC 07M .0501 is pending before the RRC. Therefore it cannot be withdrawn pursuant to 26 NCAC 05 .0107(3). If I am wrong, please let me know.

26 NCAC 05 .0107(3) states, "An agency may withdraw a rule after filing with the RRC and before review by the RRC when: ... (3) there is no staff recommendation to object to the rule;

15A NCAC 07M .0503 and .0602 have staff opinions recommending objection. Accordingly, they cannot be withdrawn pursuant to 26 NCAC 05 .0107(3).

15A NCAC 07M .0902 however does not have an objection. Accordingly, it can be withdrawn.

As always, if you have any questions or concerns please do not hesitate to contact me.

I hope you have a pleasant Labor Day weekend.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Everett, Jennifer
Sent: Thursday, September 1, 2022 4:43 PM
To: Peaslee, William W; Rules, Oah
Cc: Burgos, Alexander N; Lopazanski, Mike; Lucasse, Mary L; Willis, Angela; Goebel, Christine A
Subject: CRC 15A NCAC 07M
Attachments: 15A NCAC 07M .0201 with tech changes.docx; 15A NCAC 07M .0202 with tech changes.docx; 15A NCAC 07M .0401 with tech changes.docx; 15A NCAC 07M .0402 with tech changes.docx; 15A NCAC 07M .0403 with tech changes.docx; 15A NCAC 07M .0601 with tech changes.docx; 15A NCAC 07M .0603 with tech changes.docx; 15A NCAC 07M .0701 with tech changes.docx; 15A NCAC 07M .0702 with tech changes.docx; 15A NCAC 07M .0703 with tech changes.docx; 15A NCAC 07M .0704 with tech changes.docx; 15A NCAC 07M .0705 with tech changes.docx; 15A NCAC 07M .0801 for RRC.docx; 15A NCAC 07M .0802 for RRC.docx; 15A NCAC 07M .1001 with tech changes.docx; 15A NCAC 07M .1002 with tech changes.docx; 15A NCAC 07M .1101 with tech changes.docx; 15A NCAC 07M .1102 with tech changes.docx; 15A NCAC 07M .1201 with tech changes.docx; 15A NCAC 07M .1202 with tech changes.docx; Request for Changes Coastal Resources Commission 7M Sept 1 2022.docx; 2022-09-01_Memo to RRC Counsel re authority for rules.pdf

Bill,

Attached are the rewritten rules and responses to your technical change requests and objections regarding:

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0602, .0603, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0902, .1001, .1002, .1101, .1102, .1201, .1202

In addition, the CRC is requesting to withdraw 15A NCAC 07M .0501, .0503, .0602, and .0902 pursuant to 26 NCAC 05 .0107(3).

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0402

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

*With regard to “coastal resources”, the Coastal Area Management Act refers to the State’s “costal lands and waters” (GS 113A-102) as NC’s most valuable. It continues that among the most biologically productive regions of this State and of the nation are coastal and estuarine waters and marshlands. CAMA further states that the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States. The **Coastal Resources** Commission is given the authority to provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values. To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations; and to insure the orderly and balanced*

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

use and preservation of our coastal resources on behalf of the people of North Carolina and the nation.

“Activities” has been clarified.

“G.S. 113A-103(2)” added.

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

Barrier Island is term familiar to the regulated public.

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

Clarified.

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

Deleted.

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

Deleted.

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

The term “significant adverse impact” has specific meaning when used in context project reviews and is known to the regulated public and sister agencies. The term of art is used through out the CRC rules and has been for 40 years.

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

Real property.

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

This would be a catch-all for information that is not typical and may not be included in a standard form or application, but necessary for DCM and other review agencies to review the project. Individual review agencies may also want to see additional information required by other agencies.

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

Clarified.

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

Clarified.

(b), Page 2, Lines 17-19: This is ambiguous and subjective. What is the standard of size, magnitude, and impacts? Who determines this? What does the agency mean by “affects”? Would a residential solar panel in the coastal area “affect” or have the

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

“potential to affect” the “land”? Definitions by their nature should be finite, not subjective. They should be clear and unambiguous. Consider simply listing the type of facilities rather than leaving it open ended and subject to the caprices of the agency.

Clarified to be consistent with G.S 113A-19.2.

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

Deleted “capable” and added statute references defining facilities.

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

Terminal and petroleum products are defined by the NC Oil Pollution and Hazardous Substance Control Act (G.S. 143-215.96). Reference added.

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

Deleted.

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

This language is included in CAMA (G.S. 113A-119.2).

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

This is familiar to the regulated public and is cited in CAMA (G.S 113A-119.2).

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

Development is defined in CAMA (G.S. 113A-103(5)(a), 113A-119.2 as well as 15A NCAC 05H .0100.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

This is a policy which pairs with 113A-103(5a) Floating Structure. The terms you question are found in 113A-103(1a) Boat, 113A-103(2) Coastal Area, 113A-119.2(a)(2) Discharge; 113A-129.1(a) Public Trust Rights; 113A-113 AECs Public Trust Waters; 113A-134.2 Public Trust Resources same as 113-131(e); 113A-134.2(2) Public Trust rights same as G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.); 113A-113(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution.

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

113A-103; 113A-113(5)

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Permitted marinas – 113A-107(a) gives the Commission authority to establish State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Land and water areas addressed in the State guidelines may include underground areas and resources, and airspace above the land and water, as well as the surface of the land and surface waters. Such guidelines shall be used in the review of applications for permits issued pursuant to this Article and for review of and comment on proposed public, private and federal agency activities that are subject to review for consistency with State guidelines for the coastal area. Marinas are permitted pursuant to 15A NCAC 7H .0208(b)(5).

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

The Commission does not regulate floating structures outside the Coastal Area.

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

113A-118 Permit Required is the Commission authority for requiring a permit for any development in an Area of Environmental Concern.

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

113A107(b) see above regarding State guidelines for development in the coastal area. Deleted repealed citation.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

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

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0702 Definitions

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Done.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Mitigation projects will involve dredging and filling. Added citation 113-229 Dredge and Fill Law. Requires a permit for any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department.

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

Deleted reasonable and prudent.

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

Deleted close proximity.

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

The Division disagrees that State or Federal roadways, navigation projects, ports and public access project are not descriptive. The regulated community, primarily NC DOT is familiar with this terminology/categories and has been since 1985.

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

Added comma.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

*Clarified "access to public trust resources".
Deleted available.
Deleted significant.
Clarified that it is consistent with the local land use plan.*

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

*(b), Page 1, Line 27: Is there a citation to the "permit process time period"?
Cited.*

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

*(a)(3) Page 1, Line 10: Is there a size requirement to the "area"? What are the criteria for determining if an "area" is "desirable"?
Mitigation projects can vary from acres to square feet. Regarding the preferential hierarchy, "desirable" is referring to the ecological function being replaced or mitigated. Depending on the project replacement of salt marsh may be preferred over freshwater marsh.*

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

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

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

Acquisition of a degraded area (ditched and drained) would not be considered high quality area. This would be determined during individual project proposals.

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

Clarified.

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

Clarified.

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

Clarified.

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

Deleted.

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

Clarified.

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

Deleted.

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

Deleted.

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Denials of both would be subject to the appeals process.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

113A-113 gives the Commission authority to establish Areas of Environmental Concern, specifically 113A-133(b)(2) for "Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;". Also 113A-113(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution."

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

The Secretary of the Army under 33 US Code 3.

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

The authority under 113A-113(5).

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

Added citation.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Beach quality material is compatible with the standards described in 15a NCAC 7H .0312. Active nearshore system, shallow active nearshore and inlet shoal system are marine system terms familiar to the regulated community.

(b), Page 1, Lines 8-9: What substantive requirement is being placed on who? Innovative measures proposed by project applicant are considered during the permitting process.

(c), Page 1, Lines 10-11: What material is what disposal sites? Who determines whether is a use is "beneficial" and "consistent with Paragraph (a)", and using what criteria? Dredge material is often store in disposal sites sometimes referred to as dredged spoil islands. These areas are often state-owned. Use of this material would be coordinated with the Dept or Administration during the permitting process. Dredged material placed on beaches are required to meet the compatibility standards of 15A NCAC 7H .0312.

*(d), Page 1, Lines 12-13: This Paragraph is vague and ambiguous.
Citation added 113A-126*

*History Note, Page 1, Line 15: Should G.S. 113A-124(c) be cited as authority?
Added citation for Dredge and Fill GS 113-229.*

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

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

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

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

2

3

SECTION .0200 - SHORELINE EROSION POLICIES

4

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 estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish these public purposes, the planning of future land uses, **reasonable** rules and public expenditures **should shall** be created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and public resources resulting from **recognized** coastal hazards.

12

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. October 1, 2022.

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

2
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 impacts** to North Carolina's natural heritage. All means **should shall** be taken to identify
6 and develop response measures that will not adversely affect estuarine and marine productivity. The public right to
7 use and enjoy the ocean beaches **must shall** be protected. The protected uses include traditional recreational uses (such
8 as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach
9 rescue services. Private property rights to oceanfront properties including the right to protect that property in ways
10 that are consistent with public rights **should shall** 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 an** alternative to the loss or massive relocation of oceanfront development. **In light of this experience, beach**
19 **Beach** 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 Hazard** and Public Trust Waters Areas of Environmental Concern
25 and the 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, bulldozing should**
37 **may** be allowed, but only to the extent necessary to protect property for a short period of time until threatened
38 structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary
39 stabilization measures 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~~ shall consider innovative institutional programs and scientific research that will
5 provide for effective management of coastal shorelines. The development of innovative measures that will lessen or
6 slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties is
7 encouraged.

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

17 (i) The ~~state State will~~ shall promote education of the public on the dynamic nature of the coastal zone and on effective
18 measure to cope with ~~our~~ ever changing ~~shorelines, shorelines of the coastal area.~~

19
20 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*

21 *Eff. March 1, 1979;*

22 *Amended Eff. March 1, 1985;*

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

24 *Amended Eff. March 1, 1992;*

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

26 *Amended Eff. May 4, 1995;*

27 *Readopted Eff. October 1, 2022.*

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

2
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. October 1, 2022.*

1 15A NCAC 07M .0402 is readopted as published with changes in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0402 DEFINITIONS**

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

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

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

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

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

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

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

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

34 (5) a discussion an analysis of potential significant adverse impacts on recreational uses and scenic,
35 archaeological and historic resources;

36 (6) a discussion an analysis of potential risks to human life or property;

- 1 (7) ~~a discussion~~ an analysis of the impacts on the human environment including noise, vibration and
- 2 visual impacts;
- 3 (8) ~~a discussion~~ an analysis of the procedures and time needed to secure an energy facility in the event
- 4 of severe weather conditions, such as extreme wind, currents and waves due to northeasters and
- 5 hurricanes;
- 6 (9) other specific data necessary required for the various state and federal agencies and commissions
- 7 with jurisdiction to evaluate the consistency of the proposed project with relevant standards and
- 8 guidelines;
- 9 (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and
- 10 related structures. The plan shall include an estimate of the cost to decommission and remove the
- 11 energy facility including a discussion of the financial instrument(s) used to provide for the
- 12 decommissioning and the removal of the structures that comprise the energy facility. The plan shall
- 13 also include a proposed description of the condition of the site once the energy facility has been
- 14 decommissioned and removed.
- 15 (11) ~~a specific demonstration~~ an analysis that the proposed project is consistent with relevant local land
- 16 use ~~plans. plans and with guidelines governing land uses in AECs.~~

17 Any An impact ~~assessment~~ analysis for a proposed major energy facility shall include ~~a discussion~~ of the items

18 described in Subparagraphs (a)(1) through (11) of this Rule for the associated energy exploration or development

19 activities related to exploration or development of OCS resources and other energy facilities. including all foreseeable

20 assessments of resource potential, including the gathering of scientific data, exploration wells, and any delineation

21 activities that are likely to follow development, production, maintenance and decommissioning.

22 (b) "Major energy facilities" are those energy ~~facilities~~ facilities, including those described in G.S. 113A-119.2(3),

23 which because of their size, magnitude or scope of impacts, have the potential to ~~affect~~ negatively impact any land or

24 water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include

25 include, but are not necessarily limited to, the following:

- 26 (1) Any facility capable of refining petroleum ~~products;~~ consistent with G.S. 143-215.77;
- 27 (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum
- 28 products or synthetic gas gas; as defined in G.S 143-215.96;
- 29 (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- 30 (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- 31 (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other
- 32 equipment necessary for the operation of a wind generating facility that cumulatively, with any other
- 33 wind energy facility whose turbines are located within one-half mile of one another, are capable of
- 34 generating three megawatts or larger;
- 35 (6) Thermal energy generation;
- 36 (7) Major pipelines Pipelines 12 inches or more in diameter that carry petroleum products or synthetic
- 37 gas;

1 (8) Structures, including drillships and floating platforms ~~and structures relocated from other states or~~
2 ~~countries~~, located in offshore waters for the purposes of energy exploration, development or
3 production; and

4 (9) Onshore support or staging facilities related to offshore energy exploration, development or
5 production.

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

8

9 *History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-119.2; 113A-124;

10 *Eff. March 1, 1979;*

11 *Amended Eff. October 1, 1988;*

12 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*

13 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*

14 *Amended Eff. March 1, 2011; August 1, 2000;*

15 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07M .0403 POLICY STATEMENTS**

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

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

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

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

33 (e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources
34 consistent with 113A-1-2(b)(4)(a). resources. Energy development shall be sited and designed to provide maximum
35 protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural
36 landforms.

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

- 3 (1) Activities that ~~could may~~ result in significant adverse impacts on ~~coastal resources, resources of the~~
4 ~~coastal area,~~ including marine and estuarine resources and wildlife resources, as defined in G.S.
5 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the
6 coastal area shall be ~~avoided avoided. unless site specific information demonstrates that each such~~
7 ~~activity will result in no significant adverse impacts on the use of public trust waters and adjacent~~
8 ~~lands or coastal resources;~~
- 9 (2) For petroleum facilities, ~~necessary~~ data and information required ~~by the state~~ for ~~state State~~ permits
10 and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum
11 release or spills, evaluate possible trajectories, and enumerate response and mitigation measures
12 employing the best available technology to be followed in the event of a release or spill. The
13 information ~~must shall~~ demonstrate that the potential for petroleum release or spills and ensuing
14 damage to coastal resources has been minimized and shall factor environmental conditions, currents,
15 winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. ~~For This~~
16 ~~same data and information shall be required for~~ facilities requiring an Oil Spill Response ~~Plan; Plan;~~
17 ~~this information shall be included in such a plan;~~
- 18 (3) Dredging, spoil disposal and construction of ~~related~~ structures that are likely to have significant
19 adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be
20 ~~avoided; minimized, and any unavoidable actions of this sort shall minimize damage to the marine~~
21 ~~environment;~~
- 22 (4) ~~Damage to or interference with Significant adverse impacts to~~ existing or traditional uses, such as
23 fishing, navigation and access to public trust areas, and areas with high biological or recreational
24 value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be ~~avoided; avoided~~
25 ~~to the extent that such damage or interference is likely to have significant adverse impacts on the~~
26 ~~use of public trust waters and adjacent lands or coastal resources;~~
- 27 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
28 shall be avoided ~~to the extent that damage to such structures resulting from geological phenomena~~
29 ~~is likely to if the siting of structures will~~ have significant adverse impacts on the use of public trust
30 waters, adjacent lands or coastal resources;
- 31 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
32 extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated ~~sufficiently~~
33 ~~in advance of the commencement of severe weather~~ to ensure that significant adverse impacts on
34 the use of public trust waters, adjacent lands and coastal ~~resources; resources shall be avoided;~~
- 35 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;

- 1 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
2 environmental or natural resources of more than local significance, as defined in G.S. 113A-
3 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- 4 (9) ~~No energy~~ Energy facilities shall ~~not~~ be sited in areas where they pose a threat to the integrity of the
5 facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a
6 history of overwash or inlet formation, and ~~areas in the vicinity of existing inlets; Inlet Hazard Areas~~
7 ~~identified in 15A NCAC 7H .0304;~~
- 8 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
9 areas shall be avoided:
- 10 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
11 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
12 spawning areas and essential fish habitat areas of particular concern as designated by the
13 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic
14 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
15 migratory bird routes;
- 16 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
17 for registration or dedication by the North Carolina Natural Heritage Program;
- 18 (C) crossings of streams, rivers, and lakes except for existing ~~readily accessible~~ corridors;
- 19 (D) anchorage areas and port areas;
- 20 (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- 21 (F) ~~dump sites; Ocean Dredged Material Disposal Sites;~~
- 22 (G) primary dunes and frontal dunes;
- 23 (H) established recreation or wilderness areas, such as federal, ~~state~~ State and local parks,
24 forests, wildlife ~~refuges; refuges and other areas used in a like manner;~~
- 25 (I) military air space, training or target area and transit lanes;
- 26 (J) cultural or historic sites of more than local significance; and
- 27 (K) segments of Wild and Scenic River System.
- 28 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
29 Nesting and spawning periods shall be avoided; and
- 30 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
31 existing prior to construction shall be restored ~~as soon as practicable~~ following abandonment. For
32 abandoned facilities outside the coastal area, habitat in the areas shall be restored to its
33 preconstruction state and functions ~~as soon as practicable~~ if the abandonment of the structure is
34 likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal
35 resources.
- 36

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

1 *Eff. March 1, 1979;*
2 *Amended Eff. April 1, 1992;*
3 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*
4 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*
5 *Amended Eff. February 1, 2011; August 1, 2000;*
6 *Readopted Eff. October 1, 2022.*

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

2

3

SECTION .0600 - FLOATING STRUCTURE POLICIES

4

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

6 It is hereby declared that the general welfare and public interest require that floating **structures, structures as defined**
7 **in G.S. 113A-103(5a)**, to be used for residential or commercial purposes not infringe upon the public trust rights nor
8 discharge into the public trust waters of the coastal area of North Carolina.

9

10 *History Note:* Authority *G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); **113A-103; 113A-***
11 ***113(5);***
12 ***113A-124(e)(5);***
13 *Eff. July 1, 1983;*
14 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07M .0603 is readopted as published with changes in 34:09 NCR 764 as follows:

2

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

4 (a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the
5 public trust waters of the coastal area except in permitted marinas.

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

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

9

10 *History Note:* Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-103; 113A-
11 119.2(a)(2)
12 113A-124(e)(5);
13 *Eff. July 1, 1983;*
14 Readopted Eff. October 1, 2022.

1 15A NCAC 07M .0701 is readopted as published with changes 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, enhancing,
10 creating, or 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
14 permitted and unauthorized unpermitted development. Proposals to mitigate losses of coastal resources shall be
15 considered only for those projects development shown to be in the public interest, as defined by the standards in 15A
16 NCAC 7M .0703. 15A NCAC 7M .0703, and only after all other reasonable means of avoiding or minimizing such
17 losses have been exhausted.

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

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

2

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

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

7

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

9

Eff. January 1, 1984;

10

Readopted Eff. October 1, 2022.

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

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

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

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

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

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

35
36 *History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229

37 *Eff. January 1, 1984;*

38 *Amended Eff. September 1, 1985;*

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

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

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

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

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

29 (c) Mitigation proposals to offset losses of coastal resources associated with due to publicly funded projects shall be
30 reviewed by the staff Division of Coastal Management with the sponsoring agency and incorporated into the project
31 plans, by the State or federal agency.

32 (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions
33 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126. G.S.
34 113A-126 and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant
35 and the CRC.

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

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4

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984;
Readopted Eff. October 1, 2022.

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

2

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

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

7

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

9

Eff. January 1, 1984;

10

Amended Eff. November 1, 1984;

11

Readopted Eff. October 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. October 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. October 1, 2022.*

1 15A NCAC 07M .1001 is readopted as published **with changes** 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 **and coastal** resources,
10 violate **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. October 1, 2022.

1 15A NCAC 07M .1002 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2

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

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

7 (b) Where laser weaponry is used, the area of restricted surface waters shall be at least as large as the recommended
8 laser safety **zone-zone under 33 USCS 3.**

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

11

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

13 *Eff. March 1, 1990;*

14 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07M .1101 is readopted as published **with changes** 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~~ **Dredged** material disposal practices may result in removal of material important to the sediment
8 budget of ocean and inlet beaches. This **activity may, particularly over time, may** adversely impact **important** natural
9 beach functions especially during storm events and may increase long term erosion rates. Ongoing channel
10 maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal
11 sites as existing sites fill. ~~This is a financially and environmentally costly undertaking.~~ In addition, new sites for
12 disposal are increasingly harder to find **because of due to** competition from development interests for suitable sites.
13 Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of
14 navigation channels be used in a beneficial way wherever practicable.

15
16 *History Note: Authority G.S. 113A-107; **113-229;***
17 *Eff. October 1, 1992;*
18 *Readopted Eff. October 1, 2022.*

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

2

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

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

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

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

12 (d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is
13 in the public interest and shall be **encouraged at every opportunity, consistent with G.S. 113A-18(f)**

14

15 *History Note:* Authority G.S. 113A-107; **113A-118(f); 113-229**

16

Eff. October 1, 1992;

17

Readopted Eff. October 1, 2022.

1 15A NCAC 07M .1201 is readopted as published **with changes** 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,~~ **may** also impact
9 the 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 **shall** be utilized.

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

17 (c) Mining activities in state waters, or in federal waters insofar as the activities **affect impact** any land, water use or
18 natural or historic resource of ~~the state~~ **public trust** waters, shall be done in a manner that provides for protection of
19 those resources and uses. The siting and timing of such activities shall be consistent with **established** state standards
20 and regulations and 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; **113-229;**
23 *Eff. August 1, 1998;*
24 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07M .1202 is readopted as published **with changes** 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 impact** the physical ocean environment or its resources
6 shall be identified and minimized. Any **significant** unavoidable damages from these actions shall be mitigated under
7 the 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 impact** land or water uses or natural resources of the coastal area. **Damage to or interference with**
11 **existing 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 impact** these resources,
14 land or water uses or the natural resources of the coastal area, or unless their existing biological functions can be
15 sustained through mitigation.

16

17 *History Note: Authority G.S. 113A-102; 113A-107; **113-229***

18 *Eff. August 1, 1998;*

19 *Readopted Eff. October 1, 2022.*

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

Memorandum

To: Brian Liebman & William W. Peaslee, Commission Counsel
North Carolina Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

From: Mary L. Lucasse,
Special Deputy Attorney General & Counsel for Coastal Resources Commission

Date: September 1, 2022

Re: 15A NCAC 07H .0501, .0502, .0503, ~~.0504~~, .0505, .0506, .0507, .0508, .0509, .0510
15A NCAC 07M .0201, .0202, .0401, .0403,¹ ~~.0503~~, .0701, ~~.0801~~, ~~.0802~~², .1001, .1101,
1201, .1202

On July 14, 2022, Counsel for the Rules Review Commission (“RRC”) provided an opinion to the NC Coastal Resources Commission (“CRC”) that all of the above-listed rules “do not meet the definition of a “Rule” pursuant to G.S. 150B-2(8a) because they “do not implement or interpret an enactment of the General Assembly”, establish any requirements upon any persons or entities not employed by the agency”, or “affect the procedural or substantive rights or duties of a person not employed by the agency.” As a result, RRC Counsel asserts that the CRC “lacks statutory authority to adopt [these rules,]” they are not in accordance with Article 2A of the Administrative Procedure Act and are not “reasonably necessary pursuant to G.S. 150B-21.9(a)(3) as only “rules” can be reasonably necessary. In addition, “assuming arguendo that one or more of the above-captioned Rules meets the definition of a “Rule”, RRC counsel asserts that each of the rules, as written, is unclear and ambiguous pursuant to 150B-21.9(a)(2). For these reasons, RRC counsel recommends the RRC object to the rules.

The CRC respectfully disagrees and requests that the RRC approve these rules because they are required by federal statute and the General Assembly provided specific authority to the CRC, upheld by the North Carolina Supreme Court, requiring the adoption of these rules as described in more detail below.

¹ The underlined rules (15A NCAC 07H .0508, 07M .0403, .0503, .1201, and .1202) were not included in the Omnibus July 14, 2022 Staff Opinion from RRC Counsel regarding multiple rules. However, individual Staff Opinions on the underlined rules also recommended the RRC object to these rules on the basis they did not meet the definition of a “Rule.” For that reason, they are included in this memo.

² The CRC intends to respond to any objection by the RRC to the rules that have been struck through (15A NCAC 07H .0504, and 07M .0602, .0802 and .0802) by repealing these four rules.

I. Description of the Rules.

In general, the rules at issue here establish the CRC's Areas of Environmental Concern—which are the geographic areas over which the CRC has jurisdiction—and, as required by the General Assembly, set policies through rulemaking to guide the implementation of the coastal management program. Such policies are general in nature and provide direction to both the regulated public and the Commission's staff at the Division of Coastal Management to whom the CRC has delegated the day-to-day work of implementing the policies articulated by the CRC.

II. The General Assembly provided specific authority to adopt these rules.

The Coastal Area Management Act of 1974 ("CAMA") provides clear guidance by the General Assembly to the CRC authorizing it to adopt the rules at issue here. Specifically, the General Assembly directed the CRC to adopt "guidelines for the coastal area" consisting of "statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area . . . consistent with the goals . . . in G.S. 113A-102." N.C. Gen. Stat. § 113A-107 (emphasis added). In *Adams v. N.C. Dep't of Natural and Economic Resources*, the North Carolina Supreme Court held that the General Assembly's delegation "to the CRC to develop, adopt, and amend 'State guidelines' for the coastal area" is constitutional. *Id.*, 295 N.C. 683, 696-99, 249 S.E.2d 402, 410-11 (1978).

Each rule at issue in the RRC Staff Opinion provides a policy statement regarding a specific aspect of the North Carolina coastal management program (for example, the shoreline, coastal energy, mitigation, ocean mining, etc.) as authorized by G.S. § 113A-102(b). Additional authority is given to the CRC to designate geographic areas and areas of environmental concern in N.C. G. S. § 113A-103, -107, -113, -115, -119, and/or -124(b). The basic rule of statutory construction is that when a statute is clear and unambiguous, the language must be given its plain meaning. *See In re J.C.*, 372 N.C. 203, 208 (2019); *State v. Womble*, 277 N.C. App. 164, 176 (2021); *In re Spencer*, 140 N.C. App. 776, 778 (2000). These rules provide the CRC's policies for the use of our State's natural resources in the coastal area. As such, these rules implement or interpret an enactment of the General Assembly and meet the definition of a "Rule" in the Administrative Procedure Act on that basis alone.

To the extent that RRC Counsel interprets the CAMA authorization for the CRC to establish guidelines for the coastal area as somehow inconsistent with the requirements of the Administrative Procedure Act, the CRC disagrees. The North Carolina Supreme Court recognizes that since "amendments to the State guidelines by the CRC are considered administrative rule-making," the rule-making requirements in the Administrative Procedure Act "[complement] the procedural safeguards in [CAMA]." *Adams*, 295 N.C. at 702, 249 S.E.2d at 413. The North Carolina Supreme Court has consistently applied the principles of statutory construction to hold that "[w]here one of two statutes might apply to the same situation, the statute which deals more directly and specifically with the situation controls over the statute of more general applicability," *Fowler v. Valencourt*, 334 N.C. 345, 349, 435 S.E.2d 530, 533 (1993) (quoting *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs.*, 313 N.C. 230, 238, 328 S.E.2d 274, 279 (1985)), and that, "[w]hen two statutes apparently overlap, it is well established that the statute special and particular shall control over the statute general in nature, even if the general statute is more recent, unless it clearly appears that the legislature intended the general statute to control," *id.* at 349, 435 S.E.2d at 534 (quotation omitted). In this case, the CAMA

directly and specifically authorizes the CRC to establish guidelines for the coastal area through its rules. The specific provisions in CAMA establish the intent of the General Assembly and control over the general provisions of the Administrative Procedure Act relating to rulemaking. Therefore, the RRC should approve these rules as authorized by the specific provisions of CAMA.

III. Federal Statute requires the adoption of these rules for consistency reviews.

The Coastal Zone Management Act (CZMA) of 1972 was enacted to address national coastal issues and establishes a voluntary partnership between the federal government and U.S. coastal and Great Lakes states, including North Carolina. 16 U.S.C. § 1451, *et. seq.* The federal statute requires each participating state to adopt its own coastal management program. In 1974, the General Assembly met this requirement by adopting the North Carolina coastal management program, which delegates the implementation of the program to the CRC and is administered by the Division of Coastal Management within what is now known as the Department of Environmental Quality. The CZMA allows North Carolina to ensure that any "federal activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." *See* 16 U.S.C. § 1456. Coordination and Cooperation (Section 307) (emphasis added). The federal statute authorizes the State of North Carolina to review and determine whether a proposed federal project is consistent with CZMA-approved state "enforceable policies," including the ones articulated by the CRC in these rules. Because the federal consistency process involves a negotiation between the State and the federal agency, these rules are sometimes written in more general terms and do not include specific or quantitative standards that must apply to all projects. However, without these rules, North Carolina may not have an opportunity to review large-scale federal coastal projects for potential impacts to natural, economic, and social resources in accordance with the federal consistency review process provided under the federal CZMA. This could impact a wide range of federal project reviews, including offshore energy proposals, large-scale dredging and beach nourishment projects undertaken by the U.S. Army Corps of Engineers, military activities, management of federal lands, changes to federal navigation channels, federal permits that do not trigger state CAMA permits, federal rule changes that may impact North Carolina, federal grants, and other federal actions in the 20 coastal counties.

IV. The CRC has submitted technical corrections to address any remaining issues.

As explained above, each of these rules is consistent with the definition of a "Rule" set forth in G.S. 150B-2(8a) because they implement or interpret "an enactment of the General Assembly or Congress" or describe the procedure or practice requirements of the CRC for the State's Coastal Management Program. RRC Counsel has raised concerns that assuming *arguendo* the RRC agrees with the CRC's position, the rules are objectionable because they are "unclear and ambiguous." To the extent that RRC counsel has identified specific words or phrases they consider "unclear and ambiguous", the CRC has provided technical corrections that address these concerns. Specifically, with the exception of the rules identified in footnote 2, the CRC has provided revised language to address concerns for 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510. 15A NCAC 07M .0201, .0202, .0401, .0403, .0701, .1001, .1101, 1201, and .1202. With these technical changes, any concerns over lack of clarity and ambiguity have been addressed. The CRC respectfully requests these rules be approved.

Burgos, Alexander N

Subject: FW: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Sent: Thursday, August 11, 2022 11:16 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Willis, Angela <angela.willis@ncdenr.gov>

Subject: RE: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Hi Bill,

That is correct. We continue to work on the technical change requests. The only rule we submitted for next week's meeting was 15A NCAC 07H .1805.

Jennifer

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, August 11, 2022 10:40 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>

Subject: RE: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Good morning,

As we have not heard from agency nor received any further submissions, we will inform the RRC that the agency needs additional time to respond. The above captioned rules will be reviewed at the September 2022 Rule Review Commission meeting. Responses to the Requests of Changes and revised rules, if any, should be submitted no later than 5:00 pm, Thursday September 1, 2022.

As always, if you have any questions or concerns, please do not hesitate to contact us.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: RRC Extension Letter - 15A 07H, 07I, 07J, 07M
Attachments: 07.2022 CRC Extension Letter.pdf

From: Liebman, Brian R
Sent: Thursday, July 21, 2022 4:23 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>
Subject: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Good afternoon,

Attached, please find a letter of extension for the above captioned rules. Please let me know if you have any questions or concerns.

Thank you,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
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Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, July 7, 2022 4:49 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: 15A NCAC 07M RRC Staff Opinions
Attachments: CRC Staff Opinion 07.2022 15A NCAC 07M .0602.doc; CRC Staff Opion 07.2022 15A NCAC 07M .1201.doc; CRC Staff Opinion 07.2022 15A NCAC 07M .0403.doc; CRC Staff Opion 07.2022 15A NCAC 07M .0503.doc; CRC Staff Opinion 07.2022 15A NCAC 07M .1202.doc

Good afternoon, Jennifer:

Attached please find some of the staff opinions regarding 15A NCAC 07M.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, July 6, 2022 1:30 PM
To: Peaslee, William W
Cc: Burgos, Alexander N; Rules, Oah; Lopazanski, Mike; Lucasse, Mary L; Goebel, Christine A; Willis, Angela; Wright, Alyssa N
Subject: RE: Request for Changes Coastal Resources Commission 07.2022 15A NCAC 07M

Follow Up Flag: Follow up
Flag Status: Completed

Hello,

We are kindly requesting an extension for the period of review for 15A NCAC 07M. This extension will allow staff additional time to address your technical change requests.

Thank you.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, July 5, 2022 2:16 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Request for Changes Coastal Resources Commission 07.2022 15A NCAC 07M

Good morning, Jennifer,

I'm the attorney who reviewed the Rules submitted by the North Carolina Coastal Resources Commission for the July 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, July 21, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, July 14, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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