Burgos, Alexander N

Subject: FW: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, December 12, 2023 9:54 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>
Subject: RE: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

Thanks, Jennifer.

Alex and Dana, go ahead and file/post.

Thanks guys!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, December 12, 2023 7:08 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>
Subject: RE: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

Brian,

All three final rules are attached, ready for agenda posting.

Thanks,
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)-707-8595
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

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

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;

(2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:

(A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean ~~System AEC (Rule .0203 of this subchapter)~~ System AEC in Rule .0203 of this Section and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) , and spawning and nursery areas;

(B) Development shall comply with State and federal water and air quality rules, ~~statutes~~ statutes, and regulations;

(C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Natural and Cultural ~~resources;~~ Resources;

(D) Development shall not increase siltation;

(E) Development shall not create stagnant water bodies;

(F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and

(G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits ~~as identified~~ consistent with the findings and goals of the Coastal Area Management Act identified in G.S. 113A-102, that the public benefits outweigh the ~~long range~~ adverse effects of the project, that there is no ~~reasonable~~ alternate site available for the project, and that all ~~reasonable~~ means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the

applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:

(A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(B) restore the affected environment; or

(C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes ~~place.~~ place and ~~They are usually~~ ~~located in the uppermost sections of a system where~~ populations are uniformly in their early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) at 15A NCAC 03R .0103 and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 10C .0502; ~~15A NCAC 03R .0103~~;

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission ~~(EMC).~~ (EMC) as defined in 15A NCAC 02B .0225. ~~In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values;~~ and

(6) Beds of "submerged aquatic vegetation" ~~(SAV)~~ are defined as those habitats in public trust and estuarine ~~waters~~ waters, that occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas, vegetated with one or more species of submergent ~~vegetation.~~ vegetation as listed in 15A NCAC 03I .0101(4)(i). ~~These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is~~ [~~submerged aquatic vegetation beds are~~] ~~defined by the Marine Fisheries Commission.~~ Any rules relating to ~~SAVs~~ beds of submerged aquatic vegetation [~~beds~~] shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(7) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).

(8) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short- and long-term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

(A) both adverse impacts as defined in subparagraph (a)(7) of this Rule and impacts that

promote or enhance the goals of the Coastal Area Management Act set out at G.S. 113A-102(b);

(B) the degree to which the proposed action affects public health or safety;

(C) unique characteristics of the geographic area;

(D) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;

(E) the degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;

(F) the degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into smaller component parts; and

(H) the degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation ~~as defined by the MFC,~~ as defined in 15A NCAC 07H .0208(a)(6), or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may not be allowed through ~~fringes~~ [~~of~~] regularly and irregularly flooded coastal wetlands if the loss of wetlands will have ~~no~~ significant adverse impacts on fishery resources, water ~~quality~~ quality, or adjacent ~~wetlands, and~~ wetlands. Navigation channels and canals may be allowed if there is no ~~reasonable~~ alternative that would avoid the wetland losses;

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

(C) Dredged material from maintenance of channels and canals through ~~irregularly flooded~~ coastal wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no ~~significant, long term~~ wetland impacts. Under no circumstances shall dredged material be placed on regularly or irregularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

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

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

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

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

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

~~(I)~~(H) Maintenance excavation in canals, ~~channels~~ channels, and boat basins within primary nursery areas and ~~areas~~ beds of submerged aquatic vegetation as defined ~~by the MFC~~ in 15A NCAC 03I .0101(4)(i), by the Marine Fisheries Commission shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation ~~may~~ shall be approved if the applicant meets all of the following criteria:

(i) ~~The applicant demonstrates and documents that~~ There has been navigational use of the area; ~~water-dependent need exists for the excavation;~~

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

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) and Part (b)(1)(C) of this Rule without impacting adjacent nursery areas and beds of submerged aquatic vegetation as defined ~~by the MFC; and~~ in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission;

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

(v) Consistent with the provisions of G.S. 113-229.

(2) Hydraulic Dredging

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

(B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with 15A NCAC 07H .0208(b)(8) and 15A NCAC 07H .0312 ~~and the rules in this Subchapter,~~ except as provided in Part (G) of this Subparagraph;

(C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;

(F) A water control structure shall be installed at the intake end of the effluent pipe;

(G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and

(H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;

(B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will ~~insure~~ ensure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include ~~relic~~ existing disposal sites;

(C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and

(D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation beds as defined by the ~~MFC,~~ Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water ~~gates~~ gates, and retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient ~~depth;~~ depth required to allow passage of those migratory organisms; and

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

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

(A) Marinas shall be sited in non-wetland areas or in deep ~~waters~~ water ~~(areas~~ areas not requiring ~~dredging)~~ dredging, and shall not disturb shellfish resources, beds of submerged aquatic vegetation as defined ~~by the MFC,~~ in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission, or wetland habitats, except for dredging necessary for access to high-ground sites. The following ~~four~~ alternatives for siting marinas ~~are listed in order of preference for the least damaging alterative; marina projects~~ shall be allowed. ~~designed to~~ [~~accommodate~~] ~~have the highest of these four priorities: priorities that is deemed feasible by the permit letting agency:~~

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

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

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

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

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

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

~~(D)~~(C) Marinas to be developed in waters subject to public trust rights, ~~rights~~ ~~(other~~ other than those created by dredging upland basins or ~~canals)~~ canals for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;

~~(E)~~(D) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure ~~is anticipated to~~ will result from the location of the marina. In compliance with 33 U.S.C. ~~U.S. Code~~ ~~Section~~ 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards ~~(15A NCAC 02B .0200)~~ 15A NCAC 02B .0200 adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human ~~consumption.~~ consumption as determined by the NC Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

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

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

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

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

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

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

~~(J)~~(I) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water ~~quality;~~ quality as determined by the Division of Water Resources.

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

~~(L)[(K)]~~ (J) Marina design shall comply with all applicable EMC requirements ~~(15A NCAC 02B .0200)~~ 15A NCAC 02B .0200 for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);

~~(M)[(L)]~~ (K) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;

~~(N)[(M)~~] (L) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;

~~(O)[(N)]~~ ~~All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;[pursuant to 15A NCAC 7H .0208;]~~

~~(P)[(O)]~~ (M) All applications for marinas shall be reviewed by the Division of Coastal Management to ~~determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also~~ consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and

~~(Q)[(P)]~~ (N) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.

(6) Piers and Docking Facilities.

(A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public ~~access,~~ access or to support a water dependent use that cannot otherwise occur;

(B) The total square footage of ~~shaded~~ ~~impact~~ ~~for~~ ~~docks~~ docks, ~~platforms~~ platforms, and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square ~~feet.~~ feet to limit shading impacts to the substrate. In calculating the ~~shaded~~ ~~impact,~~ total square footage, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;

(C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;

(D) A boathouse shall not exceed 400 square feet except to accommodate a documented ~~need~~ need, provided to the Division of Coastal Management by the ~~application~~ applicant for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water to the bottom edge of the roofline, and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;

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

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

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

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

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

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

(iii) Notwithstanding (i) and (ii) of this Paragraph, the proposed pier or docking facility shall not be longer than the pier head line established by the piers or docking facilities along the same contiguous shoreline having the same land use,

nor longer than one-third the width of the water body. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public.

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

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

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

(7) Bulkheads

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

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

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

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

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

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

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

~~(iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and~~

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

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

(8) Beach Nourishment

(A) Beach creation or maintenance ~~may~~ shall be allowed to enhance water related recreational facilities for public, commercial, and private use if consistent with all of the following:

(i) Beaches ~~may be created or maintained~~ are located in areas where they have historically been found due to natural processes;

(ii) Material placed in the water and along the shoreline shall be clean sand. ~~sand and free from pollutants~~. Grain size shall be equal to that found naturally at the site;

(iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;

(iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation ~~as defined by MFC;~~ beds as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i);

(v) Material shall not be placed on any submerged bottom with ~~significant~~ shellfish resources as identified by the Division of Marine Fisheries during the permit review; and

(vi) Beach construction shall not ~~create the potential for~~ cause filling of adjacent navigation channels, ~~canals~~ canals, or boat basins.

(B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;

(C) Material from dredging projects may be used for beach nourishment if:

(i) it is first handled in a manner consistent with dredged material disposal as set forth in ~~this Rule;~~ 15A NCAC 07H .0208;

(ii) it is allowed to dry prior to being placed on the beach; and

(iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.

~~(D) Beach construction shall comply with State and federal water quality standards;~~

~~(E)~~(D) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any significant adverse impacts of the original work; and

~~(F))~~(E) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.

(9) Groins

(A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;

(B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

(C) Groins shall pose no threat to navigation;

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

(E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides ~~evidence~~ the Division of Coastal Management a design showing that more structures are needed for shoreline stabilization. The groin structures shall be designed by an individual who meets any North Carolina occupational licensing requirements for the structures being proposed.

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

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

(10) "Freestanding Moorings".

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

(B) Freestanding moorings shall be permitted only:

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

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

(iii) is associated with commercial shipping, public service, or temporary construction or salvage operations.

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

(D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure ~~is anticipated to~~ will result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human ~~consumption.~~ consumption as determined by the Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

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

(F) Moorings shall be located and constructed so as to avoid ~~adverse~~ impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;

(G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC ~~standards;~~ in accordance with 15A NCAC 02B .0225.

~~(H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;~~

~~(I)~~(H) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;

~~(J) Freestanding moorings associated with commercial shipping, public service, or temporary construction or salvage operations may be permitted without a public sponsor;~~

~~(K)~~(I) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;

~~(L)~~(J) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;

~~(M)~~(K) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and

~~(N)~~(L) The type of material used to create a mooring must be ~~free of pollutants and~~ of a design and type of material so as to not present a hazard to navigation or public safety.

(11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:

(A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;

(B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, beds of submerged aquatic vegetation as defined by the ~~MFC,~~ Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i), coastal wetlands, public trust ~~right~~ right, or public trust usage; and

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

(12) "Submerged Lands Mining"

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

(i) The Division of Coastal Management shall evaluate the biological productivity and biological significance of mine sites, or borrow sites used for sediment ~~extraction, shall be evaluated~~ extraction for significant adverse impacts and a

protection strategy for these ~~natural functions and values~~ sites provided with the State approval request or permit application;

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

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

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

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

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

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

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

(ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in ~~this Rule;~~ 15A NCAC 07H .0208.

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

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

(13) "Wind Energy Facilities"

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

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

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

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

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

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

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

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

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

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

(iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Natural and Cultural Resources and unique geological features as identified by the State Archeologist pursuant to G.S. 113A-113(b)(4)(g) that require protection from uncontrolled or incompatible development; ~~development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);~~

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

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

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

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

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

History Note: *Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-115; 113A-115.1; 113A-124; 113-229;*
Eff. September 9, 1977;
Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;
RRC Objection due to ambiguity Eff. March 21, 1996;
Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;
June 1, 2010; August 1, 1998; May 1, 1996;
Readopted Eff. July 1, 2020;
Amended Eff. January 1, 2024; August 1, 2022.

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

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

(a) For purposes of this Rule, the following definitions apply:

(1) "Adverse impact", " adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).

(2) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short- and long-term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

(A) both adverse impacts as defined in subparagraph (a)(1) of this Rule and impacts that promote or enhance the goals of the Coastal Area Management Act as set out at G.S. 113A-102(b);

(B) the degree to which the proposed action affects public health or safety;

(C) unique characteristics of the geographic area;

(D) the degree to which the effects on the quality of the human environment are likely to be disagreed upon;

(E) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;

(F) the degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;

(G) the degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts; and

(H) the degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.

~~(a)~~ (b) Ocean Shoreline Erosion Control Activities:

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

(A) All oceanfront erosion response activities shall be consistent with ~~the general policy statements in 15A NCAC 07M .0200.~~ 15A NCAC 07H .0308 and G.S.113A-115.1.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are

prohibited. Such structures include bulkheads, seawalls, revetments, jetties, ~~groins~~ groins, and breakwaters.

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

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

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

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

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

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

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

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

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

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

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.

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

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;

(ii) dredging alone is not practicable to maintain safe access to the affected channel;

(iii) the structure is limited in extent and scope to that necessary to maintain the channel;

(iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and

(v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;

(ii) there is no ~~practical~~ alternative to replacing the structure that will provide the same or similar ~~benefits; and~~ benefits as determined by DCM based on costs and engineering options; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

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

(B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to

be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

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

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

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

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

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where

temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

(i) a building and its septic system shall be considered separate structures,

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

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

(i) has been issued an active CAMA permit, where necessary, approving such project; or

(ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(iii) has received a favorable economic evaluation report on a federal project; or

(iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

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

(I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall

be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

(K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(L) Sandbags used to construct temporary erosion control structures shall be tan in color and ~~three~~ 3 to ~~five~~ 5 feet wide and ~~seven~~ 7 to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed ~~six~~ 6 feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing ~~(defined~~ is defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other ~~purpose)~~ purpose is considered development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless permission is obtained from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural ~~resources;~~ resources as identified by the NC Department of Natural and Cultural Resources.

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

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

(1) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation that would adversely affect the integrity of the ~~dune~~ dune's function as a protective barrier against flooding and erosion. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.

(2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.

(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

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

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

(A) The accessway is exclusively for pedestrian use;

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

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

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

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

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

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

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

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

(4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
Eff. June 1, 1979;
Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002;
Readopted Eff. December 1, 2020;
Amended Eff. January 1, 2024; August 1, 2022; December 1, 2021.

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

15A NCAC 07M .0603 POLICY STATEMENTS

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

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

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

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

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

History Note: *Authority G.S. 113A-102; 113A-103; 113A-107; 113A-108; 113A-118; ~~119.2(a)(2);~~ 113A-119.2(a)(2); 113A-120(a)(8);*
Eff. July 1, 1983;
Readopted Eff. January 1, 2023;
Amended Eff. January 1, 2024.

Burgos, Alexander N

Subject: FW: [External] RE: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Tuesday, December 12, 2023 3:39 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>
Subject: [External] RE: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

Brian,
Thanks for that news. Mary

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, December 12, 2023 3:36 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary <MLucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Young, Elizabeth <esyoung@NCDOJ.GOV>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>
Subject: RE: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

Good afternoon all,

Thank you for the revisions. After review, it's my opinion that CRC has satisfied the Commission's objections from the August meeting. I will recommend that to the Commission, and recommend approval of the revised versions of Rules .0208, .0308, and .0603. Also, for clarity, I do not believe the changes here constitute a substantial change.

Please send the final, revised versions of all three rules to oah.rules@oah.nc.gov, copying me and Alex Burgos, and we'll get these filed and posted on the agenda.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

Burgos, Alexander N

Subject: FW: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, December 8, 2023 6:17 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>; Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Cahoon, Renee M <Renee.Cahoon@deq.nc.gov>
Subject: RE: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

Good evening,

Thank you for these changes. I have a few follow up questions on 07H .0208 and .0308. I would note that because the definitions of "adverse impact" and "significant" are identical in .0208 and .0308, the questions for .0208 apply to the equivalent language in .0308. I didn't have any questions outside those definitions for .0308, so there is no separate entry below.

.0208
In (a)(4), p.2, lines 10-11, I think there's been a drafting error, as you mention 15A NCAC 03R .0103 twice. Please correct.

In (a)(7), line 29, does "antagonistic" have a specific meaning? It seems to me that "opposed to" and "antagonistic" are synonymous. If so, I think deleting one of the terms would improve clarity. If not, and each term has a specific meaning, the rule should express that clearly.

In (a)(7), line 30, to be clear, the provisions of 113-229 that are being referenced are those in paragraph (e) of that statute?

In (a)(8), line 32, please consider deleting "that the significance of an adverse" and revising to "Context means the impact or effect shall be analyzed…" Using the term "significance" when you're defining "significant" is a little circular, and it seems to me the language is surplus anyway.

In (a)(8), line 35, correct "tern" to "term".

In (a)(8)(A), line 37, what is a "beneficial" impact?

In (a)(8)(D), p.3, line 4, please define "controversial".

In (a)(8)(F), line 7, are CRC's decision's precedential? How would any one permitting decision establish a precedent?

In (a)(8)(F), line 7, whose actions are at issue? CRC's or the applicant's?

In (a)(8)(G), line 8, does this mean actions all performed by one applicant, or actions made by multiple applicants?

In (a)(8)(h), lines 11-12, are "scientific, cultural, historical, and environmental resources" defined?

In (a)(8)(I), line 13, what is being measured here? In other words, large enough to make a difference to what?

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Friday, November 17, 2023 12:13 PM
To: Rules, Oah <oah.rules@oah.nc.gov>; Jeanette.k.doran@gmail.com; jeff.hyde@aestheticimages.net; justicebarbarajackson@gmail.com; bwl@ocrlaw.com; overton.ro@gmail.com; wnelson@smithlaw.com; wboyles@aol.com; jakeparkerrrc@gmail.com; jh@hemphillgelderlaw.com; ppowell@apbev.com
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>; Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Cahoon, Renee M <Renee.Cahoon@deq.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: CRC 15A NCAC 07H .0208, .0308 and 07M .0603

Good Afternoon Chair Doran and members of the Commission,

Please find attached the three revised rules from the Coastal Resources Commission addressing objections from the August RRC meeting. In addition, a response memo is attached from the CRC's counsel, Mary Lucasse.

Sincerely,

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)-707-8595
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

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

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;

(2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:

(A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean ~~System AEC (Rule .0203 of this subchapter)~~ System AEC in Rule .0203 of this Section and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) , and spawning and nursery areas;

(B) Development shall comply with State and federal water and air quality rules, ~~statutes~~ statutes, and regulations;

(C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Natural and Cultural ~~resources;~~ Resources;

(D) Development shall not increase siltation;

(E) Development shall not create stagnant water bodies;

(F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and

(G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits ~~as identified~~ consistent with the findings and goals of the Coastal Area Management Act identified in G.S. 113A-102, that the public benefits outweigh the ~~long range~~ adverse effects of the project, that there is no ~~reasonable~~ alternate site available for the project, and that all ~~reasonable~~ means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the

applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:

(A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(B) restore the affected environment; or

(C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes ~~place.~~ place and ~~They are usually~~ ~~located in the uppermost sections of a system where~~ populations are uniformly in their early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) at 15A NCAC 03R .0103 and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 10C .0502 and 15A NCAC 03R .0103;

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission ~~(EMC).~~ (EMC) as defined in 15A NCAC 02B .0225. ~~In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values;~~ and

(6) Beds of "submerged aquatic vegetation" ~~(SAV)~~ are defined as those habitats in public trust and estuarine ~~waters~~ waters, that occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas, vegetated with one or more species of submergent ~~vegetation.~~ vegetation as listed in 15A NCAC 03I .0101(4)(i). ~~These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is~~ [~~submerged aquatic vegetation beds are~~] ~~defined by the Marine Fisheries Commission.~~ Any rules relating to ~~SAVs~~ beds of submerged aquatic vegetation [~~beds~~] shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(7) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed or antagonistic to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229.

(8) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the significance of an adverse impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short- and long-tern effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

(A) both beneficial and adverse impacts;

(B) the degree to which the proposed action affects public health or safety;

(C) unique characteristics of the geographic area;

(D) the degree to which the effects on the quality of the human environment are likely to be controversial;

(E) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;

(F) the degree to which the action may establish a precedent for future actions;

(G) the degree to which the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into smaller component parts;

(H) the degree to which the action may cause the loss or destruction of scientific, cultural, historical, and environmental resources; and

(I) the impact is more than de minimus, that is, large enough to make a difference.

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation ~~as defined by the MFC,~~ as defined in 15A NCAC 07H .0208(a)(6), or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may not be allowed through ~~fringes~~ [~~of~~] regularly and irregularly flooded coastal wetlands if the loss of wetlands will have ~~no~~ significant adverse impacts on fishery resources, water ~~quality~~ quality, or adjacent ~~wetlands, and~~ wetlands. Navigation channels and canals may be allowed if there is no ~~reasonable~~ alternative that would avoid the wetland losses;

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

(C) Dredged material from maintenance of channels and canals through ~~irregularly flooded~~ coastal wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no ~~significant, long-term~~ wetland impacts. Under no circumstances shall dredged material be placed on regularly or irregularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

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

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

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

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

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

~~(I)~~(H) Maintenance excavation in canals, ~~channels~~ channels, and boat basins within primary nursery areas and ~~areas~~ beds of submerged aquatic vegetation as defined ~~by the MFC~~ in 15A NCAC 03I .0101(4)(i), by the Marine Fisheries Commission shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation ~~may~~ shall be approved if the applicant meets all of the following criteria:

(i) ~~The applicant demonstrates and documents that~~ There has been navigational use of the area; ~~water-dependent need exists for the excavation;~~

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

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) and Part (b)(1)(C) of this Rule without impacting adjacent nursery areas and beds of submerged aquatic vegetation as defined ~~by the MFC; and~~ in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission;

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

(v) Consistent with the provisions of G.S. 113-229.

(2) Hydraulic Dredging

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

(B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with 15A NCAC 07H .0208(b)(8) and 15A NCAC 07H .0312 ~~and the rules in this Subchapter,~~ except as provided in Part (G) of this Subparagraph;

(C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;

(F) A water control structure shall be installed at the intake end of the effluent pipe;

(G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and

(H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;

(B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will ~~insure~~ ensure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include ~~relic~~ existing disposal sites;

(C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and

(D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation beds as defined by the ~~MFC,~~ Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water ~~gates~~ gates, and retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient ~~depth;~~ depth required to allow passage of those migratory organisms; and

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

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

(A) Marinas shall be sited in non-wetland areas or in deep ~~waters~~ water ~~(areas~~ areas not requiring ~~dredging)~~ dredging, and shall not disturb shellfish resources, beds of submerged aquatic vegetation as defined ~~by the MFC,~~ in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission, or wetland habitats, except for dredging necessary for access to high-ground sites. The following ~~four~~ alternatives for siting marinas ~~are listed in order of preference for the least damaging alterative; marina projects~~ shall be allowed. ~~designed to~~ [~~accommodate~~] ~~have the highest of these four priorities: priorities that is deemed feasible by the permit letting agency:~~

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

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

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

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

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

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

~~(D)~~(C) Marinas to be developed in waters subject to public trust rights, ~~rights~~ ~~(other~~ other than those created by dredging upland basins or ~~canals)~~ canals, for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;

~~(E)~~(D) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure ~~is anticipated to~~ will result from the location of the marina. In compliance with 33 U.S.C. ~~U.S. Code~~ ~~Section~~ 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards ~~(15A NCAC 02B .0200)~~ 15A NCAC 02B .0200 adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human ~~consumption.~~ consumption as determined by the NC Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

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

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

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

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

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

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

~~(J)~~(I) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water ~~quality;~~ quality as determined by the Division of Water Resources.

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

~~(L)[(K)]~~ (J) Marina design shall comply with all applicable EMC requirements ~~(15A NCAC 02B .0200)~~ 15A NCAC 02B .0200 for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);

~~(M)[(L)]~~ (K) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;

~~(N)[(M)~~] (L) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;

~~(O)[(N)]~~ ~~All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;[pursuant to 15A NCAC 7H .0208;]~~

~~(P)[(O)]~~ (M) All applications for marinas shall be reviewed by the Division of Coastal Management to ~~determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also~~ consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and

~~(Q)[(P)]~~ (N) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.

(6) Piers and Docking Facilities.

(A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public ~~access,~~ access or to support a water dependent use that cannot otherwise occur;

(B) The total square footage of ~~shaded~~ ~~impact~~ ~~for~~ ~~docks~~ docks, ~~platforms~~ platforms, and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square ~~feet.~~ feet to limit shading impacts to the substrate. In calculating the ~~shaded~~ ~~impact,~~ total square footage, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;

(C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;

(D) A boathouse shall not exceed 400 square feet except to accommodate a documented ~~need~~ need, provided to the Division of Coastal Management by the ~~application~~ applicant for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water to the bottom edge of the roofline, and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;

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

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

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

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

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

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

(iii) Notwithstanding (i) and (ii) of this Paragraph, the proposed pier or docking facility shall not be longer than the pier head line established by the piers or docking facilities along the same contiguous shoreline having the same land use,

nor longer than one-third the width of the water body. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public.

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

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

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

(7) Bulkheads

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

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

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

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

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

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

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

~~(iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and~~

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

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

(8) Beach Nourishment

(A) Beach creation or maintenance ~~may~~ shall be allowed to enhance water related recreational facilities for public, commercial, and private use if consistent with all of the following:

(i) Beaches ~~may be created or maintained~~ are located in areas where they have historically been found due to natural processes;

(ii) Material placed in the water and along the shoreline shall be clean sand. ~~sand and free from pollutants~~. Grain size shall be equal to that found naturally at the site;

(iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;

(iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation ~~as defined by MFC;~~ beds as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i);

(v) Material shall not be placed on any submerged bottom with ~~significant~~ shellfish resources as identified by the Division of Marine Fisheries during the permit review; and

(vi) Beach construction shall not ~~create the potential for~~ cause filling of adjacent navigation channels, ~~canals~~ canals, or boat basins.

(B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;

(C) Material from dredging projects may be used for beach nourishment if:

(i) it is first handled in a manner consistent with dredged material disposal as set forth in ~~this Rule;~~ 15A NCAC 07H .0208;

(ii) it is allowed to dry prior to being placed on the beach; and

(iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.

~~(D) Beach construction shall comply with State and federal water quality standards;~~

~~(E)~~(D) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any significant adverse impacts of the original work; and

~~(F)~~)(E) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.

(9) Groins

(A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;

(B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

(C) Groins shall pose no threat to navigation;

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

(E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides ~~evidence~~ the Division of Coastal Management a design showing that more structures are needed for shoreline stabilization. The groin structures shall be designed by an individual who meets any North Carolina occupational licensing requirements for the structures being proposed.

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

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

(10) "Freestanding Moorings".

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

(B) Freestanding moorings shall be permitted only:

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

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

(iii) is associated with commercial shipping, public service, or temporary construction or salvage operations.

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

(D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure ~~is anticipated to~~ will result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human ~~consumption.~~ consumption as determined by the Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

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

(F) Moorings shall be located and constructed so as to avoid ~~adverse~~ impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;

(G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC ~~standards;~~ in accordance with 15A NCAC 02B .0225.

~~(H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;~~

~~(I)~~(H) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;

~~(J) Freestanding moorings associated with commercial shipping, public service, or temporary construction or salvage operations may be permitted without a public sponsor;~~

~~(K)~~(I) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;

~~(L)~~(J) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;

~~(M)~~(K) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and

~~(N)~~(L) The type of material used to create a mooring must be ~~free of pollutants and~~ of a design and type of material so as to not present a hazard to navigation or public safety.

(11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:

(A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;

(B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, beds of submerged aquatic vegetation as defined by the ~~MFC,~~ Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i), coastal wetlands, public trust ~~right~~ right, or public trust usage; and

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

(12) "Submerged Lands Mining"

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

(i) The Division of Coastal Management shall evaluate the biological productivity and biological significance of mine sites, or borrow sites used for sediment ~~extraction, shall be evaluated~~ extraction for significant adverse impacts and a

protection strategy for these ~~natural functions and values~~ sites provided with the State approval request or permit application;

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

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

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

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

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

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

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

(ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in ~~this Rule;~~ 15A NCAC 07H .0208.

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

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

(13) "Wind Energy Facilities"

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

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

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

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

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

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

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

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

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

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

(iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Natural and Cultural Resources and unique geological features as identified by the State Archeologist pursuant to G.S. 113A-113(b)(4)(g) that require protection from uncontrolled or incompatible development; ~~development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);~~

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

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

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

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

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

History Note: *Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-115; 113A-115.1; 113A-124; 113-229;*
Eff. September 9, 1977;
Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;
RRC Objection due to ambiguity Eff. March 21, 1996;
Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;
June 1, 2010; August 1, 1998; May 1, 1996;
Readopted Eff. July 1, 2020;
Amended Eff. January 1, 2024; August 1, 2022.

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

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

(a) For purposes of this Rule, the following definitions apply:

(1) "Adverse impact", " adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed or antagonistic to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229.

(2) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the significance of an adverse impact or effect must be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly affected parties. Both short- and long-term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

(A) both beneficial and adverse impacts;

(B) the degree to which the proposed action affects public health or safety;

(C) unique characteristics of the geographic area;

(D) the degree to which the effects on the quality of the human environment are likely to be controversial;

(E) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;

(F) the degree to which the action may establish a precedent for future actions;

(G) the degree to which the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts;

(H) the degree to which the action may cause the loss or destruction of scientific, cultural, historical, and environmental resources; and

(I) the impact is more than de minimus, that is, large enough to make a difference.

~~(a)~~ (b) Ocean Shoreline Erosion Control Activities:

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

(A) All oceanfront erosion response activities shall be consistent with ~~the general policy statements in 15A NCAC 07M .0200.~~ 15A NCAC 07H .0308 and G.S. 113A-115.1.

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

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

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

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

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

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

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

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

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

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

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

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.

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

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;

(ii) dredging alone is not practicable to maintain safe access to the affected channel;

(iii) the structure is limited in extent and scope to that necessary to maintain the channel;

(iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and

(v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;

(ii) there is no ~~practical~~ alternative to replacing the structure that will provide the same or similar ~~benefits; and~~ benefits as determined by DCM based on costs and engineering options; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

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

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

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

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

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

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

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal

under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

(i) a building and its septic system shall be considered separate structures,

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

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

(i) has been issued an active CAMA permit, where necessary, approving such project; or

(ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(iii) has received a favorable economic evaluation report on a federal project; or

(iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

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

(I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division

of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

(K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(L) Sandbags used to construct temporary erosion control structures shall be tan in color and ~~three~~ 3 to ~~five~~ 5 feet wide and ~~seven~~ 7 to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed ~~six~~ 6 feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing ~~(defined~~ is defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other ~~purpose)~~ purpose is considered development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless permission is obtained from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural ~~resources:~~ resources as identified by the NC Department of Natural and Cultural Resources.

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

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

(1) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation that would adversely affect the integrity of the ~~dune.~~ dune's function as a protective barrier against flooding and erosion. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.

(2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.

(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

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

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

(A) The accessway is exclusively for pedestrian use;

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

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

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

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

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

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

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

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

(4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
Eff. June 1, 1979;
Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002;
Readopted Eff. December 1, 2020;
Amended Eff. January 1, 2024; August 1, 2022; December 1, 2021.

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

15A NCAC 07M .0603 POLICY STATEMENTS

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

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

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

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

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

History Note: *Authority G.S. 113A-102; 113A-103; 113A-107; 113A-108; 113A-118; ~~119.2(a)(2);~~113A-119.2(a)(2); 113A-120(a)(8);*
Eff. July 1, 1983;
Readopted Eff. January 1, 2023;
Amended Eff. January 1, 2024.

Burgos, Alexander N

Subject: FW: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Friday, December 8, 2023 10:37 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>; Gibson, Jessica M <Jessica.Gibson@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC

Will do, sorry I thought you had them all. I will submit the rest including these.

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)-707-8595
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

---

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, December 8, 2023 10:26 AM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>; Gibson, Jessica M <Jessica.Gibson@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC

Hi Jennifer,

These changes look good to me. I'll recommend approval at the meeting next week. Please send these to oah.rules@oah.nc.gov, copying me and Alex.

Thanks!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

Burgos, Alexander N

Subject: FW: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC
Attachments: 15A NCAC 07H .1103 with tech changes.docx; 15A NCAC 07H .1203 with tech changes.docx; 15A NCAC 07H .1503 with tech changes.docx; 15A NCAC 07H .1903 with changes.docx; 15A NCAC 07H .2003 with changes.docx; 15A NCAC 07H .2103 with changes.docx; 15A NCAC 07H .2203 with changes.docx; 15A NCAC 07H .2403 with changes.docx; 15A NCAC 07H .2503 with tech changes.docx; 15A NCAC 07H .2703 with changes.docx; 15A NCAC 07H fee rules - Request for Changes Responses Nov 26 2023.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, December 7, 2023 1:02 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Lopazanski, Mike <mike.lopazanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Davis, Braxton C <Braxton.Davis@deq.nc.gov>; Gibson, Jessica M <Jessica.Gibson@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC

Brian,

Attached are responses to your technical change requests and re-written rules for 15A NCAC 07H.

Thanks.

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)-707-8595
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

15A NCAC 07H .1103 is amended as published with changes in 38:05 NCR 274 as follows:

15A NCAC 07H .1103 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00) for riprap revetments sited at or above normal high water or normal water level, or a permit fee of~~ four hundred dollars ($400.00) for riprap ~~revetments sited below normal high water or normal water level.~~ revetments. The applicant shall pay a permit fee of four hundred dollars ($400.00) for bulkheads. Permit fees shall be paid by check or money order payable to the ~~Department.~~ Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; ~~113A-113(b);~~ 113A-118.1; 113A-119; ~~113-119.1;~~ 113A-119.1; 113A-124; 113-229;*
Eff. March 1, 1984;
Amended Eff. October 5, 2009; September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. April 1, 2022;
Amended January 1, 2024.

15A NCAC 07H .1203 is amended as published with changes in 38:05 NCR 274 as follows:

15A NCAC 07H .1203 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00)~~ four hundred dollars ($400.00) by check or money order payable to the ~~Department.~~ Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; ~~113A-113(b);~~ 113A-118.1; 113A-119; ~~113-119.1;~~ 113A-119.1; 113A-124; 113-229;*
Eff. March 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. December 1, 2021;
Amended Eff. January 1, 2024.

15A NCAC 07H .1503 is amended as published with changes in 38:05 NCR 274as follows:

15A NCAC 07H .1503 APPLICATION FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00) for maintenance excavation of 100 cubic yards or less or~~ four hundred dollars ($400.00) for maintenance excavation ~~of 100~~ up to 1,000 cubic yards. Permit fees shall be paid by check or money order payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; ~~113A-113(b);~~ 113A-118.1; 113A-119; 113A-119.1; 113A-124; 113-229;*
Eff. July 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. October 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .1903 is amended as published with changes in 38:05 NCR 274-275 as follows:

15A NCAC 07H .1903 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00)~~ four hundred dollars ($400.00) by check or money order payable to the ~~Department.~~ Department of Environmental Quality.

History Note: *Authority G.S. 113-229(c1); 113A-107; ~~113A-113(b);~~ 113A-118.1; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. March 1, 1989;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. July 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .2003 is amended as published with changes in 38:05 NCR 275 as follows:

15A NCAC 07H .2003 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00)~~ four hundred dollars ($400.00) by check or money order payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. October 1, 1993;
Amended Eff. September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .2103 is amended as published with changes in 38:05 NCR 275 as follows:

15A NCAC 07H .2103 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00).~~ four hundred dollars ($400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. June 1, 1994;
Amended Eff. September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .2203 is amended as published with changes in 38:05 NCR 275 as follows:

15A NCAC 07H .2203 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00).~~ four hundred dollars ($400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. February 1, 1996;
Amended Eff. September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .2403 is amended with changes as published in 38:05 NCR 275 as follows:

15A NCAC 07H .2403 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00).~~ four hundred dollars ($400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. August 1, 2000;
Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .2503 is amended as published with changes in 38:05 NCR 275 as follows:

15A NCAC 07H .2503 PERMIT FEE

The standard permit fee of ~~two hundred dollars ($200.00)~~ four hundred dollars ($400.00) has been waived for this General Permit.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-118(f); 113A-119; 113A-119.1; 113A-124;*
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Amended Eff. September 1, 2006;
Readopted Eff. July 1, 2022;
Amended Eff. January 1, 2024.

15A NCAC 07H .2703 is amended as published with changes in 38:05 NCR 275 as follows:

15A NCAC 07H .2703 PERMIT FEE

The applicant shall pay a permit fee of ~~two hundred dollars ($200.00).~~ four hundred dollars ($400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022;
Amended Eff. January 1, 2024.

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
    - Wrong: "~~a~~Association"
    - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
    - Wrong: "day~~,~~; and"
    - Right: "~~day,~~ day; and"
7. Formatting instructions and examples may be found at: www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

Brian Liebman
Commission Counsel
Date submitted to agency: November 28, 2023

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

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

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

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

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

Under G.S. 113A-119.1, the fees collected by the Commission "shall not exceed thirty three and one third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal Management. Can you confirm that this remains true after the increase in fees?

Currently, the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal Management amounts to approximately 18%. The projected revenue from the proposed fee increases will bring this amount up to 25%.

Is there a reason why the statutes cited in the History Note change between rules? It seems to me they would all be the same.
The statutes cited have been brought into alignment across the rules with the exception of 15A NCAC 7H .1103,7H .1203, and 7H .1503 where G.S. 113-229 is also cited. These General Permits involve bulkheads, riprap and dredging in Public Trust Waters which is a Dredge and Fill Law activity.

In many of the History Notes, there are citations to 113A-113(b) and 113-229. Neither seems to be on point. Should these be omitted?
G.S. 113A-113(b) is not relevant and has been deleted. See above for G.S. 113-229.

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

Brian Liebman
Commission Counsel
Date submitted to agency: November 28, 2023

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1103

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

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

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

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

I believe the reference to "113-119.1" should be to "113A-119.1".

Corrected.

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

Brian Liebman
Commission Counsel
Date submitted to agency: November 28, 2023

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1203

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

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

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

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

I believe the reference to "113-119.1" should be to "113A-119.1".
Corrected.

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

Brian Liebman
Commission Counsel
Date submitted to agency: November 28, 2023

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1503

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

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

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

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

Is there another permit for excavations over 1,000 cubic yards?
General Permits are a form of expedited permit which can be issued provided the development activity meets the General and Specific Use Standards. Projects exceeding these standards require a CAMA Major Permit. Dredging projects over 1,000 cubic yards require a CAMA Major Permit which is indicated in 15A NCAC 7H .1502.

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

Brian Liebman
Commission Counsel
Date submitted to agency: November 28, 2023

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2503

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

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

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

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

In your History Note, should there not be a citation to 113A-118(f)?
Citation added.

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

Brian Liebman
Commission Counsel
Date submitted to agency: November 28, 2023

Burgos, Alexander N

Subject: FW: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC
Attachments: 12.2023 - 15A NCAC 07H fee rules - Request for Changes.docx

From: Liebman, Brian R
Sent: Tuesday, November 28, 2023 3:23 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Lopazanski, Mike <mike.lopazanski@deq.nc.gov>
Subject: 15A NCAC 07H Fee Rules - Requests for Changes - December 2023 RRC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Commission for the December 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 14, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite 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 evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, December 8, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov