

Burgos, Alexander N

Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

From: Burgos, Alexander N

Sent: Thursday, September 15, 2022 6:52 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Lucasse, Mary L; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Thank you! I will run with these. Lawrence and Dana will check behind me prior to the meeting to make sure these good to go.

Alexander Burgos

Paralegal

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1940

Alexander.burgos@oah.nc.gov

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

Sent: Thursday, September 15, 2022 6:48 AM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Attached are the final rule set to Lawrence in one email.

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

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

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Burgos, Alexander N

Subject: FW: [External] RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Thursday, September 15, 2022 6:22 AM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>
Subject: [External] RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

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Alex,
At your request, we are working to get that to you shortly. ~ Mary

From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Sent: Thursday, September 15, 2022 6:19 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary <MLucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Hi Jennifer, it's there has been a lot of back and forth on CRC tech changes for the three follow-up matters. We want to ensure that we have the final versions of everything. Don't trust me to go to all the old emails and try to figure it out. I don't think I am reliable enough to sift through them.

Alexander Burgos

Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1940
Alexander.burgos@oah.nc.gov

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Thursday, September 15, 2022 6:16 AM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N

<Alyssa.Wright@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Lawrence,

Asking for a little clarification on what is the full set. We thought you had everything. Let us know.

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

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Burgos, Alexander N

Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700
Attachments: 09.2022 - CRC 07H .2305 Staff Opinion.pdf

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Wednesday, September 14, 2022 6:46 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Jennifer,

Could you please send the full, final rule set to me, Alex Burgos, oah.rules@oah.nc.gov, and whomever else is CC'd above?

Also, please see attached Staff Opinion regarding .2305's "significant adverse impact" language.

See you tomorrow.

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

Burgos, Alexander N

From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Wednesday, September 14, 2022 5:43 PM
To: Goebel, Christine A; Lopazanski, Mike; Willis, Angela; Davis, Braxton C; Miller, Tancred; Wright, Alyssa N; Burgos, Alexander N
Subject: [External] RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

We talked about this Monday. What if we delete the language. Then, no bridge expansion from one to two lanes?

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Wednesday, September 14, 2022 5:39 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary <MLucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Jennifer,

All changes are fine except for the “significant adverse impacts” language in 07H .2305(b). This is too undefined and the regulated public should not need to go through a lawsuit to find out what it means. Is this supposed to be like Justice Potter Stewart’s threshold test for obscenity: I know it when I see it? The case referenced does not elucidate the issue and is not exactly on point. The prior language this was deleted was at least more clear; although it is still not clear enough. Can you fix?

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, September 14, 2022 4:48 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Lawrence – further technical corrections are attached and written responses are below.

EVERY APPROVAL PROCEDURES RULE (07H .xx02)

- The hyperlink works to show the regional office based on a map. The rule does not state to contact DCM at the Regional Office indicated on the map, merely to contact DCM at the map hyperlink. **Done.**

- (b)(1), should read: “the site location, dimensions of the project area, and his or her name and address; and” **Done.**
- In (b)(3), the language “based on their relevance to the potential impacts of the proposed project” was never addressed by the agency. **The agency maintains that the comments received as well as development proposed as what DCM considers in making a decision to review a proposed project as a major permit instead of a general project. A general permit is a type of major permit in which the resources agencies have agreed to criteria not to be exceeded for common projects. If projects exceed these criteria, the project is not eligible for a general permit.**

07H .1305

- (e), line 18, currently has “the permitted boat ramp (with with a maximum...” The parenthesis and one “with” needs to be deleted by striking it out. **Done.**

07H .1405 Specific Conditions

- In (f), the ambiguity was not clarified with the inclusion of the language “around these structures”. No improvement in what “structures” they are referring to. Rule .1401 and this section regard “construction of groins in the estuarine and public trust waters AECs” but makes no reference to “structures”. Must assume groins are being referred to. **Revised.**

07H .1501

- No comma placed after “public trust waters”, as requested. **Done.**
- History Note: Authority, 113-229(c) was not corrected to 229(c1), as requested. **Done.**
- The comma after “activities” in line 12 was not corrected and the “shall” portion is still in its own separate clause. **Done.**

07H .1601

- No comma placed after “public trust waters”, as requested. **Done.**

07H. 1604

- In (b), it was asked if the alteration prohibition to “preconstruction bottom contours” only applies to this Subsection. The paragraph was altered in the second sentence, but does not address whether the alteration is section or subsection specific. **The rule has already been submitted. We mean for this to apply to the whole Section (i.e. 07H .1600 et seq). Let us know if you need additional information.**

07H .2005

- To reiterate the request, remove the added comma in line 5. Not addressed. **Done.**

07H .2305

- In (b), the term “significant adverse impacts” was used to replace the problematic and vague language. This is substantially similar to the deleted language. The agency stated “significant adverse impacts” is not defined but is a term of art in community and throughout CRC rules. The issue is “significant” is undefined and it remains unknown what “adverse impacts” must affect in order to be disqualified. This will be objected to if not addressed. **We maintain that this is a term of art used in other rules and understood by the courts. See, e.g. Shell Island Homeowners Assoc. v. Tomlinson, 134NC app. 217 (1999). This term of art is based on the goals of CAMA which require the CRC to balance the protection of natural resources with development. So, if the development will significantly adversely impact resources, then the two are not balanced.**

07H .2702

- Delete the extra “permit” in (c), line 27. **Done.**

07H .2705

- Correct modified and added language in (a). Should read, “native species per G.S. 113A-113(b)(1).” **Done.**
- In (p), reinsert “vegetation”. Also, “native submerged aquatic vegetation” was defined per “Marine Fisheries”. Not helpful to the regulated public. **Done.**

Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, September 14, 2022 4:48 PM
To: Duke, Lawrence; Rules, Oah
Cc: Lucasse, Mary L; Goebel, Christine A; Lopazanski, Mike; Willis, Angela; Davis, Braxton C; Miller, Tancred; Wright, Alyssa N; Burgos, Alexander N
Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700
Attachments: 15A NCAC 07H .1501_2022-09-14 rev.docx; 15A NCAC 07H .1405_2022-09-14 rev.docx; 15A NCAC 07H .1402_2022-09-14 rev.docx; 15A NCAC 07H .1305_2022-09-14 rev.docx; 15A NCAC 07H .1302_2022-09-14 rev.docx; 15A NCAC 07H .2705_2022-09-14 rev.docx; 15A NCAC 07H .2702_2022-09-14 rev.docx; 15A NCAC 07H .2602_2022-09-14 rev.docx; 15A NCAC 07H .2402_2022-09-14 rev.docx; 15A NCAC 07H .2305_2022-09-14 rev.docx; 15A NCAC 07H .2302_2022-09-14 rev.docx; 15A NCAC 07H .2202_2022-09-14 rev.docx; 15A NCAC 07H .2102_2022-09-14 rev.docx; 15A NCAC 07H .2005_2022-09-14 rev.docx; 15A NCAC 07H .2002_2022-09-14 rev.docx; 15A NCAC 07H .1602_2022-09-14 rev.docx; 15A NCAC 07H .1601_2022-09-14 rev.docx; 15A NCAC 07H .1502_2022-09-14 rev.docx

Lawrence – further technical corrections are attached and written responses are below.

EVERY APPROVAL PROCEDURES RULE (07H .xx02)

- The hyperlink works to show the regional office based on a map. The rule does not state to contact DCM at the Regional Office indicated on the map, merely to contact DCM at the map hyperlink. **Done.**
- (b)(1), should read: “the site location, dimensions of the project area, and his or her name and address; and” **Done.**
- In (b)(3), the language “based on their relevance to the potential impacts of the proposed project” was never addressed by the agency. **The agency maintains that the comments received as well as development proposed as what DCM considers in making a decision to review a proposed project as a major permit instead of a general project. A general permit is a type of major permit in which the resources agencies have agreed to criteria not to be exceeded for common projects. If projects exceed these criteria, the project is not eligible for a general permit.**

07H .1305

- (e), line 18, currently has “the permitted boat ramp (with with a maximum...” The parenthesis and one “with” needs to be deleted by striking it out. **Done.**

07H .1405 Specific Conditions

- In (f), the ambiguity was not clarified with the inclusion of the language “around these structures”. No improvement in what “structures” they are referring to. Rule .1401 and this section regard “construction of groins in the estuarine and public trust waters AECs” but makes no reference to “structures”. Must assume groins are being referred to. **Revised.**

07H .1501

- No comma placed after “public trust waters”, as requested. **Done.**
- History Note: Authority, 113-229(c) was not corrected to 229(c1), as requested. **Done.**
- The comma after “activities” in line 12 was not corrected and the “shall” portion is still in its own separate clause. **Done.**

07H .1601

- No comma placed after “public trust waters”, as requested. **Done.**

07H. 1604

- In (b), it was asked if the alteration prohibition to “preconstruction bottom contours” only applies to this Subsection. The paragraph was altered in the second sentence, but does not address whether the alteration is section or subsection specific. **The rule has already been submitted. We mean for this to apply to the whole Section (i.e. 07H .1600 et seq). Let us know if you need additional information.**

07H .2005

- To reiterate the request, remove the added comma in line 5. Not addressed. **Done.**

07H .2305

- In (b), the term “significant adverse impacts” was used to replace the problematic and vague language. This is substantially similar to the deleted language. The agency stated “significant adverse impacts” is not defined but is a term of art in community and throughout CRC rules. The issue is “significant” is undefined and it remains unknown what “adverse impacts” must affect in order to be disqualified. This will be objected to if not addressed. **We maintain that this is a term of art used in other rules and understood by the courts. See, e.g. Shell Island Homeowners Assoc. v. Tomlinson, 134NC app. 217 (1999). This term of art is based on the goals of CAMA which require the CRC to balance the protection of natural resources with development. So, if the development will significantly adversely impact resources, then the two are not balanced.**

07H .2702

- Delete the extra “permit” in (c), line 27. **Done.**

07H .2705

- Correct modified and added language in (a). Should read, “native species per G.S. 113A-113(b)(1).” **Done.**
- In (p), reinsert “vegetation”. Also, “native submerged aquatic vegetation” was defined per “Marine Fisheries”. Not helpful to the regulated public. **Done.**

JOSH STEIN
ATTORNEY GENERAL



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

Memorandum

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

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

Date: September 1, 2022

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

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

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

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

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

I. Description of the Rules.

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

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

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

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

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

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

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

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

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

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

**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.

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0402

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

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

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Date submitted to agency: July 5, 2022

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

“Activities” has been clarified.

“G.S. 113A-103(2)” added.

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

Barrier Island is term familiar to the regulated public.

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

Clarified.

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

Deleted.

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

Deleted.

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

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

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

Real property.

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

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

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

Clarified.

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

Clarified.

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

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Date submitted to agency: July 5, 2022

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

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

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

Deleted “capable” and added statute references defining facilities.

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

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

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

Deleted.

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

*History Note, Page 1, Line 11: G.S. 113A-124(c)(5) has been repealed. Please explain the agency’s authority to adopt this Rule.
113A-103; 113A-113(5)*

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

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Commission Counsel
Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

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

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

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

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Commission Counsel

Date submitted to agency: July 5, 2022

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

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

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07M .0702 Definitions

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

Done.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

Deleted reasonable and prudent.

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

Deleted close proximity.

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

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

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

Added comma.

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Date submitted to agency: July 5, 2022

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

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

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

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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Commission Counsel
Date submitted to agency: July 5, 2022

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

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

Clarified.

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

Clarified.

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

Clarified.

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

Deleted.

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

Clarified.

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

Deleted.

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

Deleted.

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

Denials of both would be subject to the appeals process.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

The Secretary of the Army under 33 US Code 3.

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

The authority under 113A-113(5).

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

Added citation.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

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

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: July 14, 2022

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: July 5, 2022

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

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

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

2

3

SECTION .0200 - SHORELINE EROSION POLICIES

4

15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY

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

12

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

14

Eff. March 1, 1979;

15

RRC Objection due to lack of necessity Eff. October 17, 1991;

16

Amended Eff. March 1, 1992;

17

Readopted Eff. October 1, 2022.

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

2
3 **15A NCAC 07M .0202 POLICY STATEMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

21 *Eff. March 1, 1979;*

22 *Amended Eff. March 1, 1985;*

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

24 *Amended Eff. March 1, 1992;*

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

26 *Amended Eff. May 4, 1995;*

27 *Readopted Eff. October 1, 2022.*

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

2
3 **SECTION .0400 - COASTAL ENERGY POLICIES**
4

5 **15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8

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

10 *Eff. March 1, 1979;*

11 *Amended Eff. October 1, 1988;*

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

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

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

15 *Readopted Eff. October 1, 2022.*

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

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

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

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

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

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

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

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

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

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

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

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

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

2

3

SECTION .0600 - FLOATING STRUCTURE POLICIES

4

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

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

9

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

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

2

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

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

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

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

9

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

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

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

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

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

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

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

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

2

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

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

7

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

9

Eff. January 1, 1984;

10

Readopted Eff. October 1, 2022.

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

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

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

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

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

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

35
36 *History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229
37 *Eff. January 1, 1984;*
38 *Amended Eff. September 1, 1985;*

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

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

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

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

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

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

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

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

1
2
3
4

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

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

2

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

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

7

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

9

Eff. January 1, 1984;

10

Amended Eff. November 1, 1984;

11

Readopted Eff. October 1, 2022.

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

2
3 **SECTION .0800 - COASTAL WATER QUALITY POLICIES**

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

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

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

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

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

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

2

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

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

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

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

13

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

15

Eff. November 1, 1985;

16

Amended Eff. October 1, 1988;

17

Readopted Eff. October 1, 2022.

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

2

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

5

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

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

11

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

13

Eff. March 1, 1990;

14

Readopted Eff. October 1, 2022.

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

2

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

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

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

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

11

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

13 *Eff. March 1, 1990;*

14 *Readopted Eff. October 1, 2022.*

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

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

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

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

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

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

2

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

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

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

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

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

14

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

16

Eff. October 1, 1992;

17

Readopted Eff. October 1, 2022.

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

2
3 **SECTION .1200 - POLICIES ON OCEAN MINING**

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

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

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

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

21
22 *History Note:* Authority G.S. 113A-102; 113A-103; 113A-107; **113-229;**
23 *Eff. August 1, 1998;*
24 *Readopted Eff. October 1, 2022.*

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

2

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

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

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

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

16

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

18 *Eff. August 1, 1998;*

19 *Readopted Eff. October 1, 2022.*

Burgos, Alexander N

Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

From: Davis, Braxton C <Braxton.Davis@NCDENR.Gov>

Sent: Wednesday, September 14, 2022 11:11 AM

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

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

Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

For “around these structures,” it literally refers to the prior sentence that lists basins, piers, etc... if it helps Mr. Lawrence understand, we could replace “these structures” with the same list as the prior sentence

Braxton Davis

Director, North Carolina Division of Coastal Management

NC Department of Environmental Quality

400 Commerce Avenue

Morehead City, NC 28557

252-515-5411



Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Sent: Wednesday, September 14, 2022 11:08 AM

To: Willis, Angela <angela.willis@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>

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

Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Hi all,

I know it's CRC starting today so I'll revise the non-substantive changes below as I'm sure you all are busy. Green highlights of his remaining issues sound more substantive so I'll wait for instructions/input on those items.

Best,
Aly

Alyssa Wright (*she/her*)
Assistant General Counsel
N.C. Department of Environmental Quality
919.707.8531 (office)
alyssa.wright@ncdenr.gov

1601 Mail Service Center
Raleigh, NC 27699-1601

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

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Wednesday, September 14, 2022 10:52 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Willis, Angela <angela.willis@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

A few things:

EVERY APPROVAL PROCEDURES RULE (07H .xx02)

- The hyperlink works to show the regional office based on a map. The rule does not state to contact DCM at the Regional Office indicated on the map, merely to contact DCM at the map hyperlink.
- (b)(1), should read: "the site location, dimensions of the project area, and his or her name and address; and"
- In (b)(3), the language "based on their relevance to the potential impacts of the proposed project" was never addressed by the agency.

07H .1305

- (e), line 18, currently has "the permitted boat ramp (with with a maximum..." The parenthesis and one "with" needs to be deleted by striking it out.

07H .1405 Specific Conditions

- In (f), the ambiguity was not clarified with the inclusion of the language "around these structures". No improvement in what "structures" they are referring to. Rule .1401 and this section regard "construction of groins in the estuarine and public trust waters AECs" but makes no reference to "structures". Must assume groins are being referred to.

07H .1501

- No comma placed after "public trust waters", as requested.
- History Note: Authority, 113-229(c1) was not corrected to 229(c1), as requested.
- The comma after "activities" in line 12 was not corrected and the "shall" portion is still in its own separate clause.

07H .1601

- No comma placed after "public trust waters", as requested.

07H. 1604

- In (b), it was asked if the alteration prohibition to "preconstruction bottom contours" only applies to this Subsection. The paragraph was altered in the second sentence, but does not address whether the alteration is section or subsection specific.

07H .2005

- To reiterate the request, remove the added comma in line 5. Not addressed.

07H .2305

- In (b), the term "significant adverse impacts" was used to replace the problematic and vague language. This is substantially similar to the deleted language. The agency stated "significant adverse impacts" is not defined but is a

term of art in community and throughout CRC rules. The issue is “significant” is undefined and it remains unknown what “adverse impacts” must affect in order to be disqualified. This will be objected to if not addressed.

07H .2702

- Delete the extra “permit” in (c), line 27.

07H .2705

- Correct modified and added language in (a). Should read, “native species per G.S. 113A-113(b)(1).”
- In (p), reinsert “vegetation”. Also, “native submerged aquatic vegetation” was defined per “Marine Fisheries”. Not helpful to the regulated public.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

Burgos, Alexander N

Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700
Attachments: 15A NCAC 07H .1301 ML Sept 12.docx; 15A NCAC 07H .1302 ML Sept 12.docx; 15A NCAC 07H .1303 ML Sept 12.docx; 15A NCAC 07H .1304 ML Sept 12.docx; 15A NCAC 07H .1305 ML sept 12.docx; 15A NCAC 07H .1401 ML Sept 12.docx; 15A NCAC 07H .1402 ML Sept 12.docx; 15A NCAC 07H .1403 ML Sept 12.docx; 15A NCAC 07H .1404 ML Sept 12.docx; 15A NCAC 07H .1405 ML Sept 12.docx; 15A NCAC 07H .1501 ML Sept 12.docx; 15A NCAC 07H .1502 ML Sept 12.docx; 15A NCAC 07H .1503 ML Sept 12.docx; 15A NCAC 07H .1504 ML Sept 12.docx; 15A NCAC 07H .1505 ML Sept 12.docx; 15A NCAC 07H .1601 ML Sept 12.docx; 15A NCAC 07H .1602 ML Sept 12.docx; 15A NCAC 07H .1603 ML Sept 12.docx; 15A NCAC 07H .1604 ML Sept 12.docx; 15A NCAC 07H .1605 ML Sept 12.docx; 15A NCAC 07H .2001 ML Sept 12.docx; 15A NCAC 07H .2002 ML Sept 12.docx; 15A NCAC 07H .2003 ML Sept 12.docx; 15A NCAC 07H .2004 ML Sept 12.docx; 15A NCAC 07H .2005 ML Sept 12.docx; 15A NCAC 07H .2101 ML Sept 12.docx; 15A NCAC 07H .2102 ML Sept 12.docx; 15A NCAC 07H .2103 ML Sept 12.docx; 15A NCAC 07H .2104 ML Sept 12.docx; 15A NCAC 07H .2105 ML Sept 12.docx; 15A NCAC 07H .2201 ML Sept 12.docx; 15A NCAC 07H .2202 ML Sept 12.docx; 15A NCAC 07H .2203 M Sept 12.docx; 15A NCAC 07H .2204 ML Sept 12.docx; 15A NCAC 07H .2205 ML Sept 12.docx; 15A NCAC 07H .2301 ML Sept 12.docx; 15A NCAC 07H .2302 ML Sept 12.docx; 15A NCAC 07H .2303 ML Sept 12.docx; 15A NCAC 07H .2304 ML Sept 12.docx; 15A NCAC 07H .2305 ML Sept 12.docx; 15A NCAC 07H .2401 ML Sept 12.docx; 15A NCAC 07H .2402 ML Sept 12.docx; 15A NCAC 07H .2403 ML Sept 12.docx; 15A NCAC 07H .2404 ML Sept 12.docx; 15A NCAC 07H .2405 ML sept 12.docx; 15A NCAC 07H .2601 ML Sept 12.docx; 15A NCAC 07H .2602 ML Sept 12.docx; 15A NCAC 07H .2603 ML Sept 12.docx; 15A NCAC 07H .2604 ML Sept 12.docx; 15A NCAC 07H .2605 ML Sept 12.docx; 15A NCAC 07H .2701 ML sept 12.docx; 15A NCAC 07H .2702 ML Sept 12.docx; 15A NCAC 07H .2703 ML Sept 12.docx; 15A NCAC 07H .2704 ML Sept 12.docx; 15A NCAC 07H .2705 ML Sept 12.docx; CRC - 07.2022 - 07H Change Requests Responses 9.9.2022.docx; 15A NCAC 07H .1305 ML sept 12.docx

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

Sent: Tuesday, September 13, 2022 11:39 AM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Willis, Angela <angela.willis@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Lawrence,

Attached are the CRC reformatted rules and responses based on your technical change requests. Also attached is 15A NCAC 07H .2205 which was inadvertently omitted.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

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

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

**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 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 an electronic copy via email. The electronic copy must be saved as the official rule name (XX NCAC XXXX) and sent to oah.rules@oah.nc.gov.
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 rule changes after reviewing the rules and examples, please contact the reviewing attorney.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1301

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Formatting is incorrect. See 26 NCAC 02C .0108. Please fix.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

The formatting for the rule submission is incorrect. It is to have 1.5 line spacing as specified in the referenced rule above. This response a lack of seriousness as it is obvious that rule was not checked. Also, "Rules previously readopted ... and approved by the RRC in December 2021" is non-responsive and irrelevant. It is not a sufficient response and will draw an objection before the RRC for failure to follow the APA.

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected. This rule has been made consistent with 15A NCAC 7H .1200

In making this correction, the Rule now begins with a duplicate "A". Please remove one of them.

Done.

Line 8, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1302

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Please add an oxford comma after "project area" in (a)(1). It should read "...project area, and his or her name and address; and". The "his or her" is misplaced.

Done.

Paragraph (a), the applicant shall contact the Division where?

The Division has four district offices and applicants contact the office within that district.

I didn't ask this for my edification. It was asked because it is unclear. And an answer to this stating "the regulated public knows where to apply" will result in a recommendation of objection.

Done.

Paragraph (a), after Division of Coastal Management, please add (DCM) or ("DCM").

Changed to Division of Coastal Management.

Paragraph (a), is "development" a defined term? Please define.

Development is defined in GS 113A-103(5).

Then state that in the rule.

Done.

Paragraph (a), on line 5, it states "The applicant shall provide..." and then Paragraph (b) begins with the same language. Move "information on site location, dimensions of the project area, and his or her name and address" down to (1) of the Subparagraphs, and renumber the others.

Corrected. Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Subparagraph (a)(1), add a comma between “obtained” and “signed”. Also, delete “that they have”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

(a)(2) remains unclear due to the “obtained signed” language. Perhaps make the paragraph a list – “confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, and indicating that they have...”

Done.

Subparagraph (a)(2), line 11, delete “instruct”, replace with “state that”, change from “to provide” to “may provide”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), change Division of Coastal Management to DCM.

Changed to Division of Coastal Management.

Subparagraph (a)(2), line 13, delete the comma after “notice” and “and”, and delete “indicate”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), starting “DCM staff shall review...” is objectionable due to problems with clarity and ambiguity. By what criteria are comments relevant? “if the proposed project can be approved by a General Permit” – Is anything approved “by a permit”? Would a project be denied a permit based on comments?

Subparagraph (a)(2), line 17, please change “he must” to “he or she shall”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Corrected.

This is still unclear. No information was given as to where to contact the Division. The second half of the second sentence should elaborate on the parties, such as “and indicate no response [by the adjacent property owners] shall be interpreted as [the adjacent property owners having] no objection [to the proposed development].”

Done.

Paragraph (c), line 18, delete or define “appropriate”. Change Division of Coastal Management to DCM. In that same sentence, what does “appropriately” mean? Delete or define criteria.

DCM has been changed to Division of Coastal Management. Appropriately deleted.

Paragraph (c), when the Rule states “Written authorization to proceed”, why not simply say “Permit”. Use active voice. Should read: “The DCM representative may issue a permit for the proposed development during the on-site meeting.”

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

The added language in (c) is unclear as to who must re-examine the proposed development and the applicable permits. “Necessary” is vague if not defined. Consider: “Construction permitted under this Subsection must begin within twelve months of the date of permit issuance or such permit shall expire. If an applicant seeks a new permit under this Subsection due to the lapsing of a previously issued permit under this Subsection, the Division of Coastal Management shall re-examine the proposed development to determine if a new General Permit may be issued.”

Done.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Paragraph (c), change “of this visit” to “of permit issuance”. Change “general authorization” to “permit”.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1303

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Spell out which “Department” is intended.

Done.

Should include language stating that fees collected shall not exceed 1/3 of the personnel and administrative costs of the Division of Coastal Management.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1304

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before re-adoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Done.

Paragraph (a) is unnecessary because it is stated in another rule.

This rule specifies that it is for non-commercial purposes.

Paragraph (b) should start "Permittees", no authority over "individuals".

General Conditions have been made consistent with that of 15A NCAC 7H .1204

This is non-responsive and will be recommending objection for being unclear unless fixed.

Done.

Paragraph (c), define "unreasonable" or remove from Rule.

Done.

Paragraph (d) is objectionable for clarity/ambiguity. Fix.

General Conditions have been made consistent with that of 15A NCAC 7H .1204

In paragraph (d), add an Oxford comma, line 15, after "conservation". Also, change to present tense for "endangers" and "affects". Furthermore, (d) is vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties. This will be another basis for recommending objection.

Revised and made consistent with G.S.113A-118.1(a)(2).

Paragraphs (e) and (f) need to be deleted as unnecessary.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

*General Conditions have been made consistent with that of 15A NCAC 7H .1204
This is non-responsive and will be recommending objection for lacking necessity
unless fixed.
Deleted.*

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1305

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), "normal high water level or normal water level" is used several times in several rules. Some use (NHW) or (NWL) or something like that. Be consistent.

Normal High Water is used in areas subject to lunar tides whereas Normal Water Level is used in areas subject to wind tides. The regulated community is familiar with this terminology. It is defined in 15A NCAC 7H .0106.

This is non-responsive. I did not ask what these terms meant or ask that any definition be added to the rule. Also, I could care less whether the regulated public is familiar with this terminology – that is not an appropriate response. Ever. In this set of rules either use the shorthand NHW or NWL, or use the full language. But use one or the other consistently instead of flopping back and forth.

Paragraph (b), what does "absolutely necessary" or "adequate" mean? Delete or define.

Deleted.

Not done. Take another look.

Done.

Paragraph (d), remove parenthesis.

Done.

Not done. Take another look. Remove the parentheticals in (e) while you're at it.

Done.

Paragraph (k), delete parenthesis on line 31 and comma immediately afterwards.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1401

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

NON-RESPONSIVE. But thank you for fixing.

Line 8, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Corrected. This rule has been made consistent with 15A NCAC 7H .1200

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1402

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See all comments for .1302: they apply here.

Corrected. Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Not corrected. See responses to Rule .1302.

Re-written.

Paragraph (d), what is the process for "prior approval"? How does this work? It should be laid out in a rule.

Deleted "prior".

That did not fix the problem. Lay out process/criteria for approval.

Added reference to 15A NCAC 7J .0405.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1403

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

See comments for .1303. Those comments apply here. Fix it.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1404

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before re-adoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Done.

Paragraph (a), what does “conforming to the standards of this Rule” mean? It is unnecessary and should be deleted.

Deleted.

Paragraphs (e) and (f) need to be deleted as unnecessary.

This rule has been made consistent with 15A NCAC 7H .1204.

No change in paragraph (b) to “permitted” rather than “individuals”. The language, as is, confers greater right on the Division than statutorily given. Add an Oxford comma in line 16 after “conservation. In paragraph (d), change to present tense for “endangers” and “affects”. (d) is vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties. Paragraphs (e) and (f) are still unnecessary and should be deleted.

Fix or the recommendation will be objection.

Revised and made consistent with G.S.113A-118.1(a)(2).

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1405

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Paragraph (c), line 8, delete "(s)".

Done.

Paragraph (e), what is a "pollutant"? Is it defined somewhere? Define.

Deleted.

Paragraph (f), objectionable for clarity/ambiguity. Fix.

This is a site specific criteria to prevent interference in navigation and to prevent shoaling in of docking facilities.

This is non-responsive. (f) remains the original (objectionable) language. What is being conveyed in (f)? The "site specific" response does not clarify where this is applicable.

Clarified.

In (h), insert an Oxford comma.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1501

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Add a comma after "public trust waters".

"This general permit is also subject to the procedures outline in Subchapter 07J .1100." is unnecessary. Delete.

Deleted.

History Note: Authority, 113-229(cl) is not a statute. Do you mean 229(c1)?

Corrected.

Insert an Oxford comma in line 9. Also, the independent clause "shall apply for a General Permit according to the rules of this Section" is improperly separated from the sentence. Either (1) add a comma after "AECs" to create a dependent clause and not break up the "shall" clause from the other necessary portion of the sentence; or (2) eliminate the comma after "activities" which may create confusion with the length of the sentence.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1502

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See all comments for .1302: they apply here.

This rule has been made consistent with 15A NCAC 7H .1202.

Not corrected. See responses to Rule .1302.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1503

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

See comments for .1303. Same comments apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1504

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1304.

This rule has been made consistent with 15A NCAC 7H 1204.

Paragraph (d), under what authority can CRC have this in a Rule. If MF already has it, is it necessary? Delete.

The CRC may allow a new basin if it causes the shellfish closure but chooses not to allow it.

Paragraphs (e) and (f) need to be deleted as unnecessary.

This rule has been made consistent with 15A NCAC 7H 1204.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?

Corrected.

No change in paragraph (a) to “permites” rather than “individuals”. The language, as is, confers greater right on the Division than statutorily given. In paragraph (b), change to present tense for “endangers” and “affects”. (b) is still vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties. Add an Oxford comma in line 14.

Revised and made consistent with G.S.113A-118.1(a)(2).

Done.

The issue of authority under (d) was not resolved, as the agency did not state where such authority is derived. The most appropriate cited authority rests in §113-229(c1), which states CRC has authority over estuarine waters and “may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued...” The statute seems to suggest permits at least have to be considered and a flat out ban for shellfish is beyond their consideration.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Consider G.S. 113A-107 and 108 as authority, since the authority to issue guidelines are broad and would likely cover this.

Added G.S. 113A-108.

Paragraphs (e) and (f) are still unnecessary.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1505

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

The opening paragraph states “maintenance excavation” but Items (1), (2), and (3) are about “New basins”. This does not make sense and is objectionable. Fix.

This General Permit covers excavation to connecting waters, channels, new basins, ditches and maintenance excavation. There are specific conditions for new basins.

Item (1), define “highground”. How is “existing” determined?

Highground is common terminology understood in the coastal area by the regulated community and is generally land above normal high water or normal water level.

Item (2), use “feet”, not “ ’ ”.

Done.

Item (6), add a comma after “marsh”.

Done.

Not done.

Done.

Item (7), delete parenthesis.

Done.

Item (8), add a comma after “basin”.

Done.

Item (9) is objectionable for clarity/ambiguity. Fix.

Done.

Not done. Add “for” after the added “public” to clarify the sentence. Otherwise, how would a proposed excavation allow a use? Furthermore, how are items (3) and (9) compatible?

Done. Three is for new basins. Nine is for existing channels and basins. Clarified.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Item (10), delete “(whichever is applicable)”.

Done.

Item (14) what does “structurally tight” mean? Remove the phrase.

Clarified.

Item (13), what is the authority for this? What is the criteria on which suitable materials are measured?

Clarified.

Item (15), what is the authority for this?

The size of development projects undertaken with General Permits is authorized under G.S. 113A-118.1.

Authority to promulgate rules prohibiting shoreline lengths above 500 feet is not conferred on the agency. The statute states, in relevant part, “The Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider: (1) The size of the development...” G.S. 113A-107 and 108 may be a more appropriate cite for authority.

Added 113A-108.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1601

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Lines 9-10, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language. Also, "according rules in this Section" is unnecessary. Delete.

This rule has been made consistent with 15A NCAC 7H .1201

Insert an Oxford comma in line 10.

Done.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)? Also, put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1602

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302.

This rule has been made consistent with 15A NCAC 7H .1202.

Not corrected. See responses to Rule .1302.

Re-written.

History Note: Authority, 113A-229(cl) is not a statute. Do you mean 113-229(c1)?

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1603

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Done.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1604

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

This Rule was obviously not reviewed before submission. Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before re-adoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

This rule has been made consistent with 15A NCAC 7H .1200.

Paragraph (a), is "or" meant? Or should it be "are"? Delete "for any purpose".
Done.

Paragraph (b), first sentence, is unclear. Fix.
Done.

does this only apply to this Subsection? It needs to be stated.
Applies to Section. Clarified.

Paragraph (e), what is the authority for this?

The permit application form contains a permission to enter on land. This form is authorized by G.Ss.113A-119.

Paragraph (f), delete "=" . This whole paragraph is objectionable.

This language was approved by the RRC for 15A NCAC 7H .1200 in December 2021 as part of re-adoption process.

Paragraphs (g) and (h) are unnecessary. Delete.

This language was approved by the RRC for 15A NCAC 7H .1200 in December 2021 as part of re-adoption process.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Done.

Add an Oxford comma in line 21.

Done.

In (f), change to present tense for “endangers” and “affects”.

(f) is also vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties.

Revised and made consistent with G.S.113A-118.1(a)(2).

Paragraphs (g) and (h) are still unnecessary.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1605

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Capitalize “general permit” in line 5.

Done.

Item (2), add a comma after “marsh”.

Done.

Item (3), reword for clarity: “must be sand or rock, clean and free of organic matter.”

Clarified.

The modification to (3) made the sentence illegible. The sentence now reads, “any additional backfill material required shall sand or rock and not contain organic matter.” Add “consist of” back into the sentence.

Done.

Item (4) means what? Unclear.

Deleted.

Item (8), what does “in other areas” mean? Also, change “they will” to “subaqueous line must”.

Clarified.

Item (9), change “electricity will” to “electricity must”. Also, us “feet” instead of “ ”.

Done.

Item (10), where are these clearances found? Put it in the rule. Incorporate by reference.

The clearance is usually found on the bridge.

No, where in U.S. rules, code, statutes, whatever. Where are these established?

33 CFR § 322.5 (i)- Special policies

Item (11), delete “Additionally:”.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Done.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1805

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*History Note: Authority, for 113-229(c1), put the statutes in numerical order.
This rule was approved by the RRC at the August 2022 meeting.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2001

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Done.

See comments for .1301. Those apply here.

Lines 9-10, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Done.

Capitalize "general permit" in line 10.

Done.

How is the standard for "shorelines that feature characteristics of the Estuarian Shoreline AEC" enforceable? Who makes the determination? When is the determination made – before or after the application?

Clarified. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2002

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Not corrected. See responses to Rule .1302.

Re-written.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2003

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*See comments for .1303. Those apply here.
Corrected.*

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2004

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before readoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraph (a), this is unnecessary.

Deleted.

Paragraph (c), what does “unreasonable” mean? Define or delete.

Deleted.

Paragraphs (e) and (f) are unnecessary. Delete.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Did not change “individuals” to “permitees”.

Done.

In (a), remove “periodic”.

Done.

In line 7, capitalize “general permit”.

Done.

In (a), this application form is authorized by G.S. 113A-119, but only authorizes inspection “(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected...”

What is being required by (c)? What is the authority to circumvent 113A-118.1(b) if this is a general permit?

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

The authority to “inspect” is found 113A-118.1(a)(4). The authority for different notice requirements for some General Permits is 113A-118.1

Change all semi-colons to commas in (c).

Done.

Paragraphs (d) and (e) are still unnecessary.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2005

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), use a different wording that does not use "nor".

Changed.

Paragraph (b), delete parenthesis, "(s)".

Done.

Remove the added comma in line 5.

Remove the commas in lines 8 and 9, as they create an unnecessary dependent clause.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2101

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Done.

Lines 9-10, "according to the authority provided in 15A NCAC 07J .1100", rules do not provide authority. Change the language. Also, delete "and according to the procedures and conditions outline in this subchapter" as it is unnecessary.

Deleted.

Remove the added comma in line 9

Done.

Change "public trust areas and estuarine waters" to "Estuarine and Public Trust Waters".

Estuarine Waters and Public Trust Areas are separate AECs.

How is the standard for "shorelines that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Clarified. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2102

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here. Fix.

Corrected.

Not corrected. See responses to Rule .1302.

Done.

In (c), what is the authority to require an "on-site" meeting? What is the extent of this "review"?

The authority is in 113A-118.1(a)(4). To confirm that the proposed development is consistent within the requirements of the General Permit.

In (d), remove "prior" to avoid ambiguity on when approval must be made.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2103

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here.

Department spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2104

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraph (a), this is unnecessary.

Deleted.

Paragraphs (e) and (f) are unnecessary. Delete.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

(a) was deleted. Renumber each paragraph.

Done.

In (b), the agency stated the authority to enter upon land is derived from the application form, presumably consented to by the applicant. This application form is authorized by G.S. 113A-119, but only authorizes inspection "(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected..."

What is being required by (d)? What is the authority to circumvent 113A-118.1(b) if this is a general permit?

The authority to "inspect" is found 113A-118.1(a)(4). The authority for different notice requirements for some General Permits is 113A-118.1

(e) and (f) are still unnecessary.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2105

DEADLINE FOR RECEIPT: **Friday, July 18, 2022**

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

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

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

Paragraph (c), how is it determined that insufficient wetland habitat exists? Based on what criteria? This is objectionable.

Deleted.

Paragraph (m), what does "in good condition" mean? With what authority does CRC impose the ongoing duty in this Paragraph?

Deleted "in good condition". Authority is 113A-118.1.

In (a), add a comma after the (etc.) parenthetical.

Done.

In (a), is the one sixth determination made where the sill is located?

Yes. Clarified.

In (c), capitalize "general permit".

Done.

As in .1504, there is an authority issue. Consider G.S. 113A-107 and 108 as authority, since the authority to issue guidelines are broad and would likely cover this.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2201

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule. Comments for .1301 apply here. Fix.

Done.

Lines 9-10, delete "according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section", as it is unnecessary.

Deleted reference to 07J .1100. The Division believes the remainder is relevant and necessary.

Change "public trust areas and estuarine waters" to "Estuarine and Public Trust Waters".

Estuarine Waters and Public Trust Areas are separate AECs.

Consider "moorings or bird nesting poles" if you want the rule to cover each individually.

Done.

Capitalize "general permit" in line 10.

Done.

How is the standard for "shorelines that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Clarified. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2202

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Not corrected. See responses to Rule .1302.

Done.

Also, delete parenthesis in Subparagraph (b)(2).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2203

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2204

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*Paragraph (d), what is “unreasonable interference”? Define or delete.
Corrected.*

Paragraph (e) is objectionable as unclear/ambiguous. What is the “quality of the human environment? What does it mean to “endanger” adjoining properties? The last sentence of the Paragraph is unnecessary. Delete.

Corrected to be consistent with 15A NCAC 07H .1204(d), which was approved by the RRC and readopted effective December 1, 2021.

Delete Paragraph (f) as it is unnecessary.

Corrected to be consistent with 15A NCAC 07H .1204(f), which was approved by the RRC and readopted effective December 1, 2021.

What is CRC’s authority for Paragraph (g).

Consistent with 15A NCAC 07H .1204(b), which was approved by the RRC and readopted effective December 1, 2021.

Remove the comma from (c).

Done.

(d) was changed, but “interfere” is still undefined or explained, but is modified by “with navigation” so it is likely sufficient.

Ok?

In (e), capitalize “general permit”.

Done.

Add an Oxford comma in line 18.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Re-written.

(e) is vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties.

Revised and made consistent with G.S.113A-118.1(a)(2).

No change in paragraph (b) to “permittees” rather than “individuals”.

Changed.

However, in (b), as is at issue in .1604, the agency may have exceeded their authority. In .1604, the agency stated the authority to enter upon land is derived from the application form, presumably consented to by the applicant. This application form is authorized by G.S. 113A-119, but only authorizes inspection “(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected...”

The authority to “inspect” is found in 113A-118.1(a)(4). The authority to not require notice for some General Permits is found in 113A-118.1.

Add an Oxford comma in line 15.

Re-written.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2205

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), delete comma after “mean high water line” and delete “whichever is applicable”.

Done.

Paragraph (b), where are these guidelines found? Incorporate by reference?

Deleted.

First word on line 12 is not a word.

Corrected.

What is DCM or CRC’s authority for Paragraph (f)?

113A-118.1

Delete parenthesis in Paragraphs (i), (k), (l), and (m).

Done.

Add comma after “vessel State registration number” on line 7, page 2.

Done.

Use “three feet by three feet” in Paragraph (o).

Done.

NOT IN THE ATTACHMENTS TO FORWARDED EMAIL.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2301

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected.

Is this a rule? It is objectionable because it does not fit within the definition of a rule. G.S. 150B-2 (8a).

Corrected.

A zero is needed in the rule number on line 9.

Deleted.

A comma is needed after "public trust areas" on line 11.

Deleted.

Capitalize "general permit".

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2302

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See .1302 comments. Those apply here.

Corrected.

Not corrected. See responses to Rule .1302.

Corrected.

Add comma after "address" on line 5. Delete parenthesis on line 6.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2303

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

See comments for .1303. Those apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Add comma after "check" on line 5.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2304

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before readoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Paragraph (c) is objectionable for clarity/ambiguity. Fix or delete.

Corrected.

Delete Paragraphs (e) and (f). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Paragraph (g), what are “work channels”? Define or delete.

Deleted.

Paragraphs (e) and (f) are still unnecessary.

Deleted.

The ambiguity in (c) was not resolved. This rule is not generally applicable and has not definiteness.

Re-written.

What is (j) regulating? When would a bridge or culvert not serve its intended purpose? Would language such as “bridges or culverts which are currently operable” be more appropriate?

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2305

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Paragraph (b) is objectionable. How is it determined that two lanes are warranted? Criteria? By what criteria is "significantly affect[ed]" or "unnecessarily endangers" measured?

Corrected.

Not corrected. The determination of "significant adverse environmental impact" was not explained or reference made to such criteria.

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

Delete parenthesis in Paragraph (d). Be consistent throughout this rule set when using NWL or NHW.

Parenthesis deleted. NWL and NHW are not synonymous. See definitions in 15A 7H .0106.

See request for consistency in response to Rule .1305.

Done?

Delete parenthesis in Subparagraphs (g)(5), (7), and (8).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2401

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Changed.

Line 8, "according to the authority provided in ...", rules do not provide authority. Change the language. Also, delete "and according to the rules of this Section" as unnecessary.

Deleted.

Capitalize "general permit".

Done.

How is the standard for "shorelines that feature characteristics of the Estuarian Shoreline AEC" enforceable? Who makes the determination? When is the determination made – before or after the application?

A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2402

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Not corrected. Exact same issues as .1302.

Corrected.

In (d), remove "prior" to avoid ambiguity on when approval must be made.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2403

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2404

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before readoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Why are semicolons used in Paragraph (d)? Fix.

Fixed.

Delete Paragraphs (e) and (f). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Deleted.

No change in paragraph (b) to “permittees” rather than “individuals”.

Corrected.

However, in (b), as is at issue in .1604, the agency may have exceeded their authority. In .1604, the agency stated the authority to enter upon land is derived from the application form, presumably consented to by the applicant. This application form is authorized by G.S. 113A-119, but only authorizes inspection “(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected...”

The authority to “inspect” is found 113A-118.1(a)(4). The authority for different notice requirements for some General Permits is 113A-118.1

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

(e) and (f) are still unnecessary.
Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2405

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Paragraph (a) specifies the physical features that must be present on a shoreline for this permit to be applicable.

*How is Paragraph (g) determined? By what criteria? This is objectionable. Fix.
Deleted.*

*Delete parenthesis in Paragraph (l).
Done.*

*Capitalize "general permit".
Done.*

*In (g), as in .1505, G.S. 113A-107 and 108 may confer authority to limit projects without permitting. Consider adding 108 as authority.
Added.*

*What does it mean to "maintaining the structure in good condition" in (l)?
Deleted "in good condition".*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2601

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected.

Capitalize "general permit".

Done.

What is the definition of or reference to "aquatic resource functions and services"?

Clarified. This terminology is commonly used within the context of compensatory mitigation, as can be found in rules administered by the U.S. Army Corps of Engineers at 73 CFR 19670 (Apr. 10, 2008, unless otherwise noted), under authorities of the federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136.

How is the standard for "shorelines... that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Clarified. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2602

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

Corrected.

Not corrected. Exact same issues as .1302.

Corrected

In (d), remove "prior" to avoid ambiguity on when approval must be made.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2603

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

See comments for .1303. Same comments apply. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2604

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraphs (f) and (g). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Same issues as .2404.

Deleted.

In (c), what does "interference with navigation or use of water by the public" mean? The term "interference" should be elaborated on.

Per your previous comment – "(d) was changed, but "interfere" is still undefined or explained, but is modified by "with navigation" so it is likely sufficient." Interfere or interference with navigation is commonly used throughout the CRC rules as they relate to public trust uses. Interference is used here. The common definition "to come into opposition, as one thing with another, especially with the effect of hampering action or procedure". So here this means hampering the action of navigation.

(d) is also vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties.

Revised and made consistent with G.S.113A-118.1(a)(2).

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2605

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Delete "(s)" in Paragraph (c).

Done.

Paragraph (e), by what criteria is this determined? This should be put in rule, whether in this one or in its own. This is objectionable.

Deleted.

Add a comma after "deed restriction" on line 19.

Done.

Add a comma after "measures" on line 25, and add "as" after "such" on this line.

Done.

One line 26, "etc." is unclear. Do not use.

Deleted.

Add a comma after "watercourses" on line 27.

Done.

Capitalize "general permit".

Done.

Ensure only two spaces are between the paragraph numbering and text.

Ok.

In (f), how are "coastal resource functions and values" calculated? What is the determination based on?

Clarified. Clarified. This terminology is commonly used within the context of compensatory mitigation, as can be found in rules administered by the U.S. Army Corps of Engineers at 73

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

CFR 19670 (Apr. 10, 2008, unless otherwise noted), under authorities of the federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136.

In (l), what are “pollutants” defined as? What is the basis for claiming an amount is “trace” or not?

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2701

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Active voice should be used saying who shall do what. “Persons planning to do X in Y areas shall apply for a general permit...” “This permit shall...” means nothing and this would therefore not be a rule. Objectionable.

Done.

“as set out in ... and according to the rules in this Section” should be deleted as unnecessary. Deleted reference to 07J .1100. The Division believes the remainder is relevant and necessary.

Capitalize “general permit”.

Done.

How is the standard for “shorelines... that feature characteristics of the Estuarian Shorelines” enforceable? Who makes the determination? When is the determination made – before or after the application?

A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2702

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

This whole rule is objectionable for lack of clarity. See comments for .1302.

Made consistent with 15A NCAC 07H .1202, which was readopted and approved by the RRC effective December 1, 2021.

Combine "The applicant shall provide...", line 5, into the subparagraphs.

Done.

Subparagraph (b)(1) and (2), "confirmation"???. Just confirmation? Or a copy of?

Addressed by requiring evidence.

Paragraph (c), "based on their relevance to the potential impacts of the proposed project"???

How is approval determined? Factors?

Addressed.

Paragraph (d), "written authorization to proceed" or "general authorization" or "authorization"???. Is this a permit? Or is it something different?

Changed to "permit".

Line 21, "shall be necessary to re-examine". Use active voice. Who submits request to whom for permit to be reissued?

Changed.

How must an applicant or adjacent property owner contact the Division and how must the applicant request approval? Is there a method?

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Contact information added.

What is the authority to require an “on-site” meeting? What is the extent of this “review”?

G.S. 113A-118.1(a)(4). The review is to ensure that the proposed development does not exceed the criteria of the General Permit.

The language in (c) is unclear as to who must re-examine the proposed development and the applicable permits. “Necessary” is vague if not defined. Consider: “Construction permitted under this Subsection shall be completed within 120 days of the date of permit issuance or such permit shall expire. If an applicant seeks a new permit under this Subsection due to the lapsing of a previously issued permit under this Subsection, the Division of Coastal Management shall re-examine the proposed development to determine if a new General Permit may be issued.”

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2703

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

See comments for .1303. Those apply here. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2704

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Paragraph (a) repeats .2701. Delete.
Deleted.

Use active voice.

Paragraph (b), what is the specific authority for “periodic inspections”?
Consistent with 15A NCAC 07H .1204(b), which was readopted and approved by the RRC effective December 1, 2021.

What does Paragraph (c) mean? Unclear.
Placement of marsh sills cannot prevent navigation of public waters.

What does everything on lines 12 and 13 mean? “Unresolved questions”?
Unanswered or open questions about the potential impacts of a proposed project.

Delete Paragraphs (e) and (f) as unnecessary.
Consistent with 15A NCAC 07H .1204(e) and (f), which were readopted and approved by the RRC effective December 1, 2021.

Same issues as .2404 with the right to inspect going beyond authority and (d) and (e) being unnecessary.
G.S. 113A-118.1(a)(4)
Deleted.

In (b), what does “interfere” mean in this context?
Interfere in the normal definition of the word with regard to G.S. 1-45.1 No adverse possession of property subject to public trust rights.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2705

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Paragraph (a), the permit is for development. What is the authority for regulating vegetation?
113A-113(b)(1). Citation added.

Paragraph (f), "Deviation from these opening requirements shall be allowable following coordination with the N.C. Division of Coastal Management" is waiver. See G.S. 150B-19(6). This is objectionable for lack of clarity when waiver is allowed like this.
Waiver removed.

Paragraph (k), line 31, "as defined in 15A NCAC..." It is not. This is objectionable for lack of clarity.
Replaced "defined" with "illustrated".

Paragraph (l), change "must" to "shall" on line 35.
Changed.

Paragraph (s), again with the "other similar materials that are approved by the NC Division of Coastal Management." This is unclear. Also, what is "pollutant"? Define or delete?
All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC effective December 2021. Also see similar language in 15A NCAC 7H .1105(d) that was approved by the RRC and readopted effective April 1, 2022. "Pollutant" removed.

Capitalize "general permit".
Done.

In (a), are "native species" those outlined in G.S. 113-229(n)(3) and made reference to in G.S. 113A-113(b)(1), which was used as authority?
Yes.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Add an Oxford comma in line 15.

Done.

How is the width calculated in (h)? From the area of construction to the other side of the waterbody?

Yes. Clarified.

In (j), what does it mean to “interfere” with leases or franchises of shellfish culture?

The common definition “to come into opposition, as one thing with another, especially with the effect of hampering action or procedure”. So here this means hampering the actions associated with working the shellfish lease.

Can reference be made to a definition of “submerged aquatic vegetation”?

Added.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

1 15A NCAC 07H .1301 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2
3 **SECTION .1300 – GENERAL PERMIT TO CONSTRUCT BOAT RAMPS ALONG ESTUARINE AND**
4 **PUBLIC TRUST SHORELINES AND INTO ESTUARINE AND PUBLIC TRUST WATERS**

5
6 **15A NCAC 07H .1301 PURPOSE**

7 A ~~permit under this Section shall allow~~ **person requesting** ~~for~~ the construction of boat ramps along estuarine and
8 public trust shorelines and into ~~Estuarine~~ **estuarine** and ~~public trust waters~~ **Public Trust Waters** ~~AECs~~ **AECs**
9 ~~according to the authority provided in Subchapter 07J .1100 and~~ **shall apply for a General Permit** according to the
10 ~~Rules~~ **rules** in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent
11 to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine
12 Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion
13 rates than the adjacent Ocean Erodible Area.

14
15 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
16 *Eff. March 1, 1984;*
17 *Amended Eff. April 1, 2003; August 1, 2000;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1302 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1302 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management **at**
5 **<https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51>** and
6 request approval for ~~development.~~ **development as defined in G.S. 113A-130(5).** ~~The applicant shall provide~~
7 ~~information on site location, dimensions of the project area, and his name and address.~~

8 (b) The applicant shall provide:

9 **(1) the site location, dimensions of the project area, name and his or her address; and**

10 **(2)(4)** confirmation that a written statement has been ~~obtained~~ **obtained**, signed by the adjacent riparian
11 property ~~owners~~ **owners**, indicating that they have no objections to the proposed work; or

12 **(3)(2)** confirmation that the adjacent riparian property owners have been notified by certified mail of the
13 proposed work. The notice shall instruct adjacent property owners to provide **any written** comments
14 on the proposed development **in writing** to the Division of Coastal Management within ten days of
15 receipt of the ~~notice, and, notice and~~ indicate that no response **by the adjacent property owners** shall
16 be interpreted as **the adjacent property owners having** no objection. ~~DCM Division~~ **DCM Division** staff shall review
17 all comments and determine, based on their relevance to the potential impacts of the proposed
18 project, if the proposed project can be approved by a General Permit. If ~~DCM Division~~ **DCM Division** staff **finds**
19 **that the comments are worthy of more in-depth review,** ~~determines that the project exceeds the~~
20 ~~guidelines established by the General Permit Process, DCM~~ **the Division** shall notify the applicant
21 that **he or she** must submit an application for a major development permit.

22 (c) No work shall begin until an on-site meeting is held with the applicant and **appropriate a** Division of Coastal
23 Management representative **to review the proposed development,** ~~so that the proposed boat ramp alignment may be~~
24 ~~appropriately marked.~~ ~~Written authorization~~ **A permit** to proceed with the proposed development ~~may~~ **shall** be issued
25 **if the Division representative finds that the application meets all the requirements of this Subchapter,** ~~during this visit.~~
26 ~~Construction of the boat ramp structure~~ **permitted under this Subsection** shall be completed within 120 days of ~~this~~
27 ~~visit~~ **permit issuance** or ~~such permit~~ **the general authorization** shall ~~expire,~~ **expire.** ~~If the applicant seeks a new permit~~
28 ~~under this Subsection, the Division of Coastal Management shall re-examine the proposed development to determine~~
29 ~~if the General Permit may be reissued.~~

30
31 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
32 *Eff. March 1, 1984;*
33 *Amended Eff. August 1, 2007; September 1, 2006; January 1, 1990;*
34 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1303 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1303 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the

5 ~~Department.~~Department of Environmental Quality.

6

7 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

8 *Eff. March 1, 1984;*

9 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1304 is readopted with changes as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1304 GENERAL CONDITIONS**

4 (a) Structures authorized by this permit shall be non-commercial boat ramps constructed of acceptable material and
5 conforming to the standards herein.

6 (b) Individuals Permittees shall allow authorized representatives of the Department of Environment and Natural
7 Resources Environmental Quality to make periodic inspections at any time deemed necessary in order to be sure
8 ensure that the activity being performed under authority of this the general permit General Permit set forth in this
9 Section is in accordance with the terms and conditions prescribed herein.

10 (c) There shall be no unreasonable interference with navigation or public use of the waters by the public during or
11 after construction, through the existence of boat ramps.

12 (d) This The permit set forth in this Section will shall not be applicable to proposed construction where the Department
13 has determined, determined endanger based on an initial review of the application, application that notice and review
14 pursuant to G.S. 113A-119 is necessary required because there are unresolved questions concerning the proposed
15 activity's impact on Areas of Environmental Concern, adjoining properties or on water quality; air quality; coastal
16 wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

17 (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

18 (f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local
19 land use plans current at the time of authorization.

20

21 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

22 *Eff. March 1, 1984;*

23 *Amended Eff. May 1, 1990;*

24 *RRC Objection due to ambiguity Eff. May 19, 1994;*

25 *Amended Eff. August 1, 1998; July 1, 1994;*

26 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1305 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1305 SPECIFIC CONDITIONS**

4 (a) Boat ramps shall be no wider than 15 feet and shall not extend more than 20 feet waterward of the normal high
5 water level or normal water level.

6 (b) Excavation and ground disturbing activities above and below the normal high water level or normal water level
7 will be limited to that **absolutely** necessary to establish **adequate** ramp slope and provide a ramp no greater in size than
8 specified by this general permit.

9 (c) Placement of fill materials below normal high water level, or normal water level, will be limited to the ramp
10 structure and any associated riprap groins. Boat ramps may be constructed of concrete, wood, steel, clean riprap, marl,
11 or any other suitable equivalent materials approved by the Division of Coastal Management. No coastal wetland
12 vegetation shall be excavated or filled at any time during construction.

13 (d) The permit set forth in this Section allows for up to a six-foot wide launch access **dock dock, (fixed fixed** or
14 **floating) floating**, immediately adjacent to a new or existing boat ramp. The length shall be limited to the length of
15 the permitted boat ramp **(with with** a maximum length of 20 feet waterward of the normal high water level or normal
16 water **level. level)**. No permanent slips are authorized by this permit.

17 (e) Groins shall be allowed as a structural component on one or both sides of a new or existing boat ramp to reduce
18 scouring. The groins shall be limited to the length of the permitted boat ramp **(with with** a maximum length of 20 feet
19 waterward of the normal high water level or normal water **level). level**.

20 (f) The height of sheetpile groins shall not exceed one foot above normal high water level or normal water level and
21 the height of riprap groins shall not exceed two feet above normal high water level or normal water level.

22 (g) Riprap groins shall not exceed a base width of five feet.

23 (h) Material used for groin construction shall be free from loose dirt or any other pollutant. Riprap material must be
24 of sufficient size to prevent its movement from the approved alignment by wave action or currents.

25 (i) "L" and "T" sections shall not be allowed at the end of groins.

26 (j) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet
27 pile, or other suitable equivalent materials approved by the Division of Coastal Management.

28 (k) Boat ramps and their associated structures authorized under this permit shall not interfere with the access to any
29 riparian property and shall have a minimum setback of 15 feet between any part of the boat ramp or associated
30 structures and the adjacent property owners' areas of riparian access. The minimum setbacks provided in the rule may
31 be waived by the written agreement of the adjacent riparian **owners, owner(s)**, or when two adjoining riparian owners
32 are co-applicants. Should the adjacent property be sold before construction of the boat ramp or associated structures
33 commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and
34 submit it to the Division of Coastal Management prior to initiating any development of the boat ramp or associated
35 structures authorized under this permit.

36
37 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

- 1 *Eff. March 1, 1984;*
- 2 *Amended Eff. August 1, 2014;*
- 3 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1401 is readopted as with changes published in 34:09 NCR 758 as follows:

2
3 **SECTION .1400 - GENERAL PERMIT FOR CONSTRUCTION OF GROINS IN ESTUARINE AND**
4 **PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

5
6 **15A NCAC 07H .1401 PURPOSE**

7 A permit under this section shall allow person requesting the construction of groins in the estuarine Estuarine and
8 public trust waters Public Trust Waters AECs AECs according to the authority provided in Subchapter 07J .1400 and
9 shall apply for a General Permit according to the rules in this Section. This general permit shall not apply to the
10 oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those
11 shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland
12 vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

13
14 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124(c);*
15 *Eff. March 1, 1984;*
16 *Temporary Amendment Eff. December 1, 2002;*
17 *Amended Eff. February 1, 2009; August 1, 2004; April 1, 2003;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1402 is readopted with changes as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1402 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at
5 <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
6 request approval for development, development as defined in G.S. 113A-130(5). The applicant shall provide
7 information on site location, dimensions of the project area, and the applicant's name and address.

8 (b) The applicant shall provide:

9 (1) the site location, dimensions of the project area, name and his or her address; and

10 (2)(+) confirmation that a written statement has been ~~obtained~~ obtained, signed by the adjacent riparian
11 property ~~owners~~ owners, indicating that they have no objections to the proposed work; or

12 (3)(-) confirmation that the adjacent riparian property owners have been notified by certified mail of the
13 proposed work. The notice shall instruct adjacent property owners to provide any written comments
14 on the proposed development in writing to the Division of Coastal Management within 40 ten days
15 of receipt of the ~~notice.~~ The notice and shall also indicate that no response by the adjacent property
16 owners shall be interpreted as the adjacent property owners having no objection. The Division staff
17 of Coastal Management shall review all comments and determine, based on their relevance to the
18 potential impacts of the proposed project, if the proposed project can be approved by a General
19 Permit. If the Division of Coastal Management staff finds that the comments are worthy of more
20 in-dept review, determines that the project exceeds the rules established by the General Permit
21 process, the Division shall notify the applicant shall be notified that he or she must submit an
22 application for a major development permit. permit shall be required.

23 (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
24 representative to review the proposed development, so that the proposed groin alignment can be marked. ~~Written~~
25 authorization A permit to proceed with the proposed development shall be issued if the Division representative finds
26 that the application meets all the requirements of this Subchapter, during this visit. Construction permitted under this
27 Subsection shall be completed within 120 days of the issuance of the permit issuance or such permit the authorization
28 shall expire expire, and it shall be necessary to re-examine the alignment to determine if the general authorization may
29 ~~be~~ If the applicant seeks a new permit under this Subsection, the Division of Coastal Management shall re-examine
30 the proposed development to determine if the General Permit may be reissued.

31 (d) Any modification or addition to the authorized project shall require prior approval from the Division of Coastal
32 Management. Management in accordance with 15A NCAC 7J .0405.

33
34 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

35 *Eff. March 1, 1984;*

36 *Amended Eff. February 1, 2009; October 1, 2007; August 1, 2004; May 1, 1990; January 1, 1990;*

37 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1403 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1403 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the

5 ~~Department.~~ Department of Environmental Quality.

6

7 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

8 *Eff. March 1, 1984;*

9 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1404 is readopted with changes as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1404 GENERAL CONDITIONS**

4 (a) Structures authorized by a general permit General Permit in this Section shall be timber, sheetpile, or riprap groins.
5 groins conforming to the standards in this Rule.

6 (b) Individuals Permitees shall allow authorized representatives of the Department of Environment and Natural
7 Resources Environmental Quality to make periodic inspections at any time deemed necessary in order to ensure that
8 the activity being performed under authority of this the general permit General Permit set forth in this Section is in
9 accordance with the terms and conditions prescribed herein.

10 (c) The placement of groins authorized in this Rule shall not interfere with the established or traditional rights of
11 navigation of the waters by the public.

12 (d) This The permit set forth in this Section shall not be applicable to proposed construction where the Department
13 Division of Coastal Management has determined, determined based on an initial review of the application, that notice
14 and review pursuant to G.S. 113A-119 is necessary required because there are unresolved questions concerning the
15 proposed activity's impact on Areas of Environmental Concern, adjoining properties or on water quality; air quality;
16 coastal wetlands; cultural or historic sites; wildlife; fisheries resources; quality, air quality, coastal wetlands, cultural
17 or historic sites, wildlife, fisheries resources, or public trust rights.

18 (e) This permit shall not eliminate the need to obtain any other required state, State, local, or federal authorization.

19 (f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local
20 land use plans current at the time of authorization.

21
22 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
23 *Eff. March 1, 1984;*
24 *Amended Eff. May 1, 1990;*
25 *RRC Objection due to ambiguity Eff. May 16, 1994;*
26 *Amended Eff. August 1, 1998; July 1, 1994;*
27 *Temporary Amendment Eff. December 1, 2002;*
28 *Amended Eff. February 1, 2009; August 1, 2004;*
29 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1405 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1405 SPECIFIC CONDITIONS**

4 (a) Groins shall be perpendicular to the shoreline and shall not extend more than 25 feet waterward of the normal
5 high water or normal water level.

6 (b) Riprap groins shall not exceed a base width of 10 feet.

7 (c) Groins shall be set back at least 15 feet from the riparian access dividing line as measured from the closest point
8 of the structure. This setback may be waived by written agreement of the adjacent riparian **owners** **owner(s)** or when
9 two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin
10 commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and
11 submit it to the Division of Coastal Management prior to initiating any development of the groin.

12 (d) The height of sheetpile groins shall not exceed one foot above normal high water or the normal water level and
13 the height of riprap groins shall not exceed two feet above normal high water or the normal water level.

14 (e) Material used for groin construction shall be free from loose **dirt**, **dirt or any other pollutant**. Groin material must
15 be of sufficient size to prevent its movement from the site by wave action or currents.

16 (f) Structure spacing shall be two times the groin length as measured from the centerline of the structure. Spacing
17 may be less than two times the groin length around channels, docking facilities, boat lifts, or boat ramps and when
18 positioned to prevent sedimentation or accretion **around these structures**, **in a particular area**.

19 (g) "L" and "T" sections shall not be allowed at the end of groins.

20 (h) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet
21 **pile** **pile**, or other suitable equivalent materials approved by the Division of Coastal Management.

22

23 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

24 *Eff. March 1, 1984;*

25 *Temporary Amendment Eff. December 1, 2002;*

26 *Amended Eff. February 1, 2009; August 1, 2004;*

27 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1501 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2
3 **SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING**
4 **CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS,**
5 **AND COASTAL SHORELINE AECS**

6
7 **15A NCAC 07H .1501 PURPOSE**

8 ~~This permit for~~ **A person requesting** excavation within or connecting to existing canals, channels, basins, or ditches in
9 ~~estuarine waters, public trust waters and coastal shoreline~~ **Estuarine Waters, Public Trust Waters and Coastal**
10 **Shorelines** AECS ~~shall allow excavation within existing canals, channels, basins, and ditches in estuarine and public~~
11 ~~trust waters~~ for the purpose of maintaining water depths and creating new boat basins from non-wetland areas that
12 will be used for private, non-commercial ~~activities,~~ **activities, shall apply for a General Permit according to the rules**
13 **of this Section.** ~~This general permit is also subject to the procedures outlined in Subchapter 07J .1100.~~

14
15 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);*
16 *Eff. July 1, 1984;*
17 *Amended Eff. July 1, 2015; December 1, 1987;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1502 is readopted with changes as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1502 APPROVAL PROCEDURES**

4 (a) ~~The An~~ applicant for a ~~general permit~~ General Permit under this Subchapter ~~for excavation within or connecting~~
5 ~~to existing canals, channels, basins, or ditches in estuarine waters, public trust waters and coastal shoreline areas of~~
6 ~~environmental concern~~ shall contact the Division of Coastal Management at
7 <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
8 request approval for ~~development.~~ development as defined in G.S. 113A-130(5). ~~Applicants shall provide their name~~
9 ~~and address, the site location, and the dimensions of the project area.~~

10 (b) The applicant ~~must~~ shall provide:

11 (1) the site location, dimensions of the project area, name and his or her address; and

12 (2)(4) A Confirmation that a written statement has been obtained, signed by the adjacent riparian property
13 owners owners, indicating that they have no objections to the proposed work; or

14 (3)(2) Certified mail return receipts (or copies thereof) indicating confirmation that the adjacent riparian
15 property owners have been notified by certified mail of the proposed work. ~~Such~~ The notice ~~should~~
16 shall instruct adjacent property owners to provide any written comments on the proposed
17 development in writing ~~for consideration by permitting officials~~ to the Division of Coastal
18 Management within ten days of receipt of the ~~notice,~~ notice and indicate that no response by the
19 adjacent property owners will be interpreted as the adjacent property owners having no objection.
20 Division staff shall review all comments and determine, based on their relevance to the potential
21 impacts of the proposed project, if the proposed project can be approved by a General Permit. If
22 DCM Division staff finds that the comments are worthy of more in-depth review, ~~determines that~~
23 ~~the project exceeds the guidelines established by the General Permit Process,~~ DCM the Division
24 shall notify the applicant that he or she must submit an application for a major development permit.

25 (c) ~~DCM staff will review the permit request and comments and determine, based on the potential impacts of the~~
26 ~~proposed project, whether the proposed project complies with the requirements of this Section and can be approved~~
27 ~~by a General Permit. If DCM staff finds that the proposed project does not comply with the requirements of this~~
28 ~~Section, the applicant will be notified that they must submit an application for a major development permit in~~
29 ~~accordance with 15A NCAC 07J .0200.~~

30 (c)(4) ~~No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management~~
31 ~~representative to~~ review the proposed development, ~~inspect and mark the proposed area of excavation and spoil~~
32 ~~disposal.~~ Written authorization A Permit to proceed with the proposed development ~~may~~ shall be issued if the Division
33 representative finds that the application meets all the requirements of this Subchapter, ~~during this site visit.~~ All
34 excavation Construction permitted under this Subsection shall be completed within 120 days of the date of permit
35 ~~issuance.~~ issuance or such permit shall expire. If the applicant seeks a new permit under this Subsection, the Division
36 of Coastal Management shall re-examine the proposed development to determine if the General Permit may be
37 reissued.

1
2
3
4
5
6

History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; ~~113-229(e)~~; 113-229(c1)
Eff. July 1, 1984;
Amended Eff. July 1, 2015; January 1, 1990; December 1, 1987;
Readopted Eff. October 1, 2022.

1 15A NCAC 07H .1503 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1503 APPLICATION FEE**

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

7

8 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

9 *Eff. July 1, 1984;*

10 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1504 is readopted with changes as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1504 GENERAL CONDITIONS**

4 (a) ~~Individuals~~ Permittees shall allow representatives of the ~~Division of Coastal Management~~ Department of
5 Environmental Quality to make periodic inspections at any time necessary to ensure that the activity being performed
6 under authority of ~~this the general permit~~ General Permit ~~set forth in this Section~~ for excavation within or connecting
7 to existing canals, channels, basins, or ditches in estuarine waters, public trust waters and coastal shoreline areas of
8 environmental concern, is in accordance with the terms and conditions ~~set forth in this Section, prescribed herein.~~

9 ~~(b) This general permit shall not be applicable to proposed maintenance excavation when the Division determines~~
10 ~~that the proposed activity will adversely affect adjacent property.~~

11 ~~(b)(e) This~~ The permit set forth in this Section shall not be applicable to proposed construction where the Division
12 Department has ~~determined,~~ determined based on an initial review of the application, application that notice and
13 review pursuant to G.S. 113A-119 is necessary required because there are unresolved questions concerning the
14 proposed activity's impact on Areas of Environmental Concern, adjoining properties or on water quality; air quality;
15 coastal wetlands; cultural or historic sites; wildlife; fisheries resources or public trust rights.

16 (d) No new basins shall be allowed that result in closure of shellfish waters according to the closure policy of the
17 Division of Marine Fisheries, 15A NCAC 18A .0911.

18 ~~(e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization, nor to~~
19 ~~abide by regulations adopted by any federal or other state agency.~~

20 ~~(f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local~~
21 ~~Land Use Plans current at the time of authorization.~~

22
23 *History Note:* Authority *G.S. 113A-107(a),(b);* G.S. 113A-108; *113A-113(b); 113A-118.1;* ~~113-229(e)~~113-
24 229(c1)

25 *Eff. July 1, 1984;*

26 *Amended Eff. May 1, 1990; December 1, 1987;*

27 *RRC Objection due to ambiguity Eff. May 19, 1994;*

28 *Amended Eff. July 1, 2015; August 1, 1998; July 1, 1994;*

29 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1505 is readopted **with changes** as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1505 SPECIFIC CONDITIONS**

4 Proposed maintenance excavation shall meet each of the following specific conditions to be eligible for authorization
5 by this general permit.

- 6 (1) New basins shall be allowed only when they are located entirely in highground and join existing
7 man-made canals or basins.
- 8 (2) New basins shall be no larger than **50' 50 feet** in either length or width and no deeper than the waters
9 they join.
- 10 (3) New basins shall be for the private non-commercial use of the land owner.
- 11 (4) Maintenance excavation shall involve the removal of no more than 1,000 cubic yards of material as
12 part of a single and complete project.
- 13 (5) All excavated material shall be placed entirely on high ground above the mean high tide or ordinary
14 high water line, and above any **marsh marsh,** or other wetland.
- 15 (6) All spoil material shall be stabilized or retained so as to prevent any excavated material from
16 re-entering the surrounding waters, **marsh marsh,** or other wetlands.
- 17 (7) The proposed project shall not involve the excavation of any marsh, submerged aquatic vegetation
18 **(as as** defined at 15A NCAC 03I .0101 by the Marine Fisheries **Commission); Commission,** or other
19 wetlands.
- 20 (8) Maintenance excavation shall not exceed the original dimensions of the canal, channel, **basin basin,**
21 or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor
22 deeper than connecting channels.
- 23 (9) Proposed excavation **in existing channels and basins** shall not **promote or provide the opportunity**
24 **for a change to allow for** a public or commercial **use. use at the time of project review.**
- 25 (10) Maintenance excavation as well as excavation of new basins shall not be allowed within or with
26 connections to primary nursery areas without prior approval from the Division of Marine Fisheries
27 or Wildlife Resources **Commission. Commission (whichever is applicable).**
- 28 (11) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin
29 to stabilize the shoreline from erosion.
- 30 (12) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal
31 water level at any point along its alignment.
- 32 (13) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other **suitable**
33 **materials approved by the Division of Coastal Management. Approval of other suitable materials**
34 **shall be based upon the potential environmental impacts of the proposed material.**
- 35 (14) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208.
36 The bulkhead shall be constructed prior to any backfilling activities and shall be **constructed**
37 **structurally tight** so as to prevent seepage of backfill materials through the structure.

1 15A NCAC 07H .1601 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2
3 **SECTION .1600 - GENERAL PERMIT FOR THE INSTALLATION OF AERIAL AND SUBAQUEOUS**
4 **UTILITY LINES WITH ATTENDANT STRUCTURES IN COASTAL WETLANDS: ESTUARINE**
5 **WATERS: PUBLIC TRUST WATERS AND ESTUARINE SHORELINES**

6
7 **15A NCAC 07H .1601 PURPOSE**

8 A ~~permit under this Section shall allow for~~ **person requesting** the installation of utility lines both aerially and
9 subaqueously in the ~~coastal wetland,~~ **Coastal Wetland,** ~~estuarine water,~~ **Estuarine Waters,** ~~public trust areas~~ **Public**
10 **Trust Areas** and ~~estuarine~~ **Estuarine,** and ~~public trust shoreline~~ **Public Trust Shoreline** AECs **shall apply for a General**
11 **Permit** ~~according to the authority provided in Subchapter 7J .1100 and~~ according rules in this Section.- This general
12 permit shall not apply to the ocean hazard AECs.

13
14 *History Note:* Authority G.S. ~~113-229(c1);~~ 113A-107(a)(b); 113A-113(b); 113A-118.1; **113-229(c1);**
15 *Eff. March 1, 1985;*
16 *Amended Eff. August 1, 2000; August 1, 1998;*
17 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1602 is readopted as with changes published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1602 APPROVAL PROCEDURES**

4 (a) ~~The An~~ applicant for a General Permit under this Subchapter ~~must shall~~ contact the Division of Coastal
5 Management at
6 https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and
7 complete an application form requesting request approval for development, development as defined in G.S. 113A-
8 130(5). The applicant shall provide information on site location, dimensions of the project area, and his name and
9 address.

10 (b) The applicant ~~must shall~~ provide:

11 (1) the site location, dimensions of the project area, name and his or her address; and

12 (2)(4) ~~(2)~~ confirmation that a written statement has been ~~obtained~~ obtained, signed by the adjacent riparian
13 property ~~owners~~ owners, indicating that they have no objections to the proposed work; or

14 (3)(2) ~~(3)~~ confirmation that the adjacent riparian property owners have been notified by certified mail of the
15 proposed work. ~~Such~~ The notice ~~should shall~~ instruct adjacent property owners to provide any
16 comments on the proposed development in writing for consideration by permitting officials to the
17 Division of Coastal Management within ten days of receipt of the ~~notice, and, notice and~~ indicate
18 that no response by the adjacent property owners will be interpreted as the adjacent property owners
19 having no objection. ~~DCM Division~~ staff ~~will shall~~ review all comments and determine, based on
20 their relevance to the potential impacts of the proposed project, if the proposed project can be
21 approved by a General Permit. If ~~DCM Division~~ staff finds that the comments are worthy of more
22 in-depth review, the Division shall notify the applicant ~~will be notified~~ that he or she must submit
23 an application for a major development permit.

24 (c) No work shall begin until an on-site meeting is held with the applicant and appropriate a Division of Coastal
25 Management representative to review the proposed development, so that the utility line alignment can be appropriately
26 marked. Written authorization A Permit to proceed with the proposed development ~~will shall~~ be issued if the Division
27 representative finds that the application meets all the requirements of this Subchapter, during this visit. Construction
28 on the utility line must permitted under this Subsection shall begin within twelve months of the date of permit issuance
29 or such permit shall expire. If the applicant seeks a new permit under this Subsection, the Division of Coastal
30 Management shall re-examine the proposed development to determine if the General Permit may be reissued, this visit
31 or the general authorization expires.

32
33 *History Note:* Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; ~~113A-229(c1); 113-229(c1);~~
34 *Eff. March 1, 1985;*
35 *Amended Eff. January 1, 1990;*
36 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1603 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .1603 PERMIT FEE**

4 The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the

5 ~~Department.~~ **Department of Environmental Quality.**

6

7 *History Note: Authority G.S. ~~113-229(e1);~~ 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113-*

8 *~~229(c1);~~*

9 *Eff. March 1, 1985;*

10 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1604 is readopted with changes as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1604 GENERAL CONDITIONS**

4 (a) Utility lines for the purpose of this General Permit ~~general permit or are~~ any pipes or pipelines for the transportation
5 of potable water, domestic sanitary sewage, natural gas, and any cable, line, or wire for the transmission, ~~for any~~
6 ~~purpose,~~ of electrical energy, telephone and telegraph messages, and radio and television communication.

7 (b) There ~~must shall~~ be no ~~resultant change in alteration of~~ preconstruction bottom contours. ~~Authorized fill Fill~~
8 ~~authorized by a permit set forth in this Section shall include includes~~ only that necessary to backfill or bed the utility
9 line. Any excess material ~~must shall~~ be removed to an upland disposal area.

10 (c) The utility line crossing ~~will shall~~ not adversely affect a public water supply intake.

11 (d) The utility line route or construction method ~~will shall~~ not disrupt the movement of those species of aquatic life
12 indigenous to the waterbody.

13 (e) ~~Individuals Permittees~~ shall allow authorized representatives of the Department of ~~Environment, Health, and~~
14 ~~Natural Resources Environmental Quality~~ to make ~~periodic~~ inspections at any time ~~necessary~~ to ensure that the activity
15 being performed under authority of ~~this general permit~~ the General Permit set forth in this Section is in accordance
16 with the terms and conditions prescribed herein.

17 (f) ~~This general~~ The permit ~~set forth in this Section will shall~~ not be applicable to proposed construction where the
18 Department has ~~determined, determined~~ based on an initial review of the application, that notice and review pursuant
19 to G.S. 113A-119 is ~~necessary required~~ because there are unresolved questions concerning the proposed ~~activity=s~~
20 ~~activity~~ impact on Areas of Environmental Concern, adjoining properties or on water quality; air quality; coastal
21 wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

22 (g) ~~This permit does not eliminate the need to obtain any other required state, local, or federal authorization, nor, to~~
23 ~~abide by regulations adopted by any federal or other state agency.~~

24 (h) ~~Development carried out under this permit must be consistent with all local requirements, AEC guidelines, and~~
25 ~~local Land Use Plans current at the time of authorization.~~

26
27 *History Note:* Authority G.S. ~~113-229(e1);~~ 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1)

28 *Eff. March 1, 1985;*

29 *Amended Eff. May 1, 1990;*

30 *RRC Objection due to ambiguity Eff. May 19, 1994;*

31 *Amended Eff. August 1, 1998; July 1, 1994;*

32 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1605 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1605 SPECIFIC CONDITIONS**

4 Proposed utility line installations **must shall** meet each of the following specific conditions to be eligible for
5 authorization by this ~~general permit~~**General Permit**:

- 6 (1) All domestic sanitary sewer line requests must be accompanied by a statement of prior approval
7 from the NC Division Water Quality.
- 8 (2) All spoils which are permanently removed must be placed on a high ground disposal site and
9 stabilized so as not to return to waters, ~~marsh~~ **marsh**, or other wetlands.
- 10 (3) Any additional backfill material required ~~must shall be~~ consist of **clean** sand or rock **and not contain**
11 **free of** organic matter.
- 12 ~~(4) Cuts through wetlands must be minimized.~~
- 13 (5) Finished grades or subaqueous or wetland crossing must be returned to preproject contours.
- 14 (6) There can be no work within any productive shellfish beds.
- 15 (7) No excavation or filling activities will be permitted between April 1 and September 30 of any year
16 within any designated primary nursery area.
- 17 (8) Subaqueous lines must be placed at a depth of six feet below the project depth of federal projects.
18 ~~In other areas~~ **For non-federal projects, subaqueous lines shall** ~~they will~~ be installed at a minimum
19 depth of two feet below the bottom contour.
- 20 (9) The minimum clearance for aerial communication lines or any lines not transmitting electricity ~~will~~
21 **shall** be ~~10'~~ **10 feet** above the clearance required for bridges in the vicinity.
- 22 (10) The minimum clearance for aerial electrical transmission lines shall be consistent with those
23 established by the US Army Corps of Engineers and US Coast ~~Guard~~, **per 33 CFR § 322.5 (i)**.
- 24
- 25 (11) The installation of a utility line on pipe bents or otherwise above the elevation of mean high or mean
26 ordinary water must be of sufficient height to allow for traditional navigation in the water body.
27 ~~Additionally the~~ **The** utility line ~~must shall~~ not interfere with the waterflow of normal or flood
28 waters.
- 29 (12) Natural gas lines ~~must shall~~ not exceed 11 inches in diameter.

30
31 *History Note:* Authority G.S. ~~113-229(c1)~~; 113A-107(a)(b); 113A-113(b); 113A-118.1; **113-229(c1)**
32 *Eff. March 1, 1985;*
33 *Amended Eff. August 1, 1998;*
34 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2001 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2
3 **SECTION .2000 - GENERAL PERMIT FOR AUTHORIZING MINOR MODIFICATIONS AND REPAIR**
4 **TO EXISTING PIER/MOORING FACILITIES IN ESTUARINE AND PUBLIC TRUST WATERS AND**
5 **OCEAN HAZARD AREAS**

6
7 **15A NCAC 07H .2001 PURPOSE**

8 ~~A permit under this Section shall allow for A person requesting~~ reconfiguration, minor modifications, ~~repair and~~
9 ~~repair, or~~ improvements to existing pier and mooring facilities in estuarine waters and public trust areas ~~according to~~
10 ~~the authority provided in Subchapter 07J .1100 of this Chapter and shall apply for a General Permit~~ according to the
11 rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the
12 Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC.
13 Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent
14 Ocean Erodible Area. **A Division of Coastal Management representative will make the determination whether the site**
15 **features characteristics of the Estuarine Shoreline at the time of permit application.**

16
17 *History Note: Authority G.S. 113A-107; 113A-118.1;*
18 *Eff. October 1, 1993;*
19 *Amended Eff. April 1, 2003;*
20 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2002 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .2002 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management **at**
5 **<https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51>** and
6 request approval for **development, development as defined in G.S. 113A-130(5). The applicant shall provide**
7 **information on site location, dimensions of the project area, and his/her name and address.**

8 (b) The applicant shall provide:

9 ~~(1) a dated plat(s) showing existing development and the proposed development; and~~

10 **(1) information on site location, dimensions of the project area, applicant name and his or her address;**
11 **and**

12 ~~(2) confirmation that that a written statement has been obtained, signed by the adjacent riparian~~
13 ~~property owners, indicating that they have no objections to the proposed work; or~~

14 ~~(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the~~
15 ~~proposed work. The notice shall instruct adjacent property owners to provide any comments on the~~
16 ~~proposed development in writing for consideration by permitting officials to the Division of Coastal~~
17 ~~Management within 10 days of receipt of the notice and indicate that no response by the adjacent~~
18 ~~property owners will be interpreted as the adjacent property owners having no objection. Division~~
19 ~~staff shall review all comments and determine, based on their relevance to the potential impacts of~~
20 ~~the proposed project, if the proposed project can be approved by a General Permit. If Division staff~~
21 ~~finds that the comments are worthy of more in-depth review, the Division shall notify the applicant~~
22 ~~that he or she must submit an application for a major development permit.~~

23 ~~(A) a written statement has been obtained and signed by the adjacent riparian property owners~~
24 ~~indicating that they have no objections to the proposed work; or~~

25 ~~(B) the adjacent property owners have been notified by certified mail of the proposed work.~~
26 ~~The notice shall instruct adjacent property owners to provide any comments on the~~
27 ~~proposed development in writing for consideration by permitting officials to the Division~~
28 ~~of Coastal Management within ten days of receipt of the notice, and, indicate that no~~
29 ~~response will be interpreted as no objection.~~

30 ~~(c) DCM staff shall review all comments. If DCM determines that the comments are relevant to the potential impacts~~
31 ~~of the proposed project and the permitting issues raised by the comments are worthy of more detailed review, DCM~~
32 ~~shall notify the applicant that he/she must submit an application for a major development permit.~~

33 ~~(d)(c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and~~
34 ~~the applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed~~
35 ~~within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or~~
36 ~~continue construction. No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal~~
37 ~~Management representative to review the proposed development. A permit to proceed with the proposed development~~

1 shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter.
2 Construction permitted under this Subsection shall be completed within 120 days of permit issuance or such permit
3 shall expire. If the applicant seeks a new permit under this Subsection, the Division of Coastal Management shall re-
4 examine the proposed development to determine if the General Permit may be reissued.
5 (d) Any modification or addition to the permitted project shall require approval from the Division of Coastal
6 Management.

7

8 *History Note: Authority G.S. 113A-107; 113A-118.1;*

9 *Eff. January 1, 1994;*

10 *Amended Eff. August 1, 2007;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2003 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2003 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the

5 ~~Department.~~ **Department of Environmental Quality.**

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. October 1, 1993;*

9 *Amended Eff. September 1, 2006; August 1, 2000;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2004 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2004 GENERAL CONDITIONS**

4 ~~(a) Structures authorized by this permit shall conform to the standards herein.~~

5 ~~(b)(a) Individuals Permittees~~ shall allow authorized representatives of the Department of ~~Environment and Natural~~
6 ~~Resources-Environmental Quality~~ to make **periodic** inspections at any time ~~deemed necessary~~ in order to ~~be sure~~
7 ~~ensure~~ that the activity being performed under the authority of ~~this the general permit~~ **General Permit** ~~set forth in this~~
8 ~~Section~~ is in accordance with the terms and conditions prescribed herein.

9 ~~(c)(b)~~ There shall be no ~~unreasonable~~ interference with navigation or use of the waters by the public by the existence
10 of piers or mooring pilings.

11 ~~(d)(c)~~ ~~This The~~ permit ~~set forth in this Section will shall~~ not be applicable to proposed construction where the
12 Department has ~~determined, determined~~ based on an initial review of the ~~application, application~~ that notice and
13 review pursuant to G.S. 113A-119 is ~~necessary required~~ because there are unresolved questions concerning the
14 proposed activity's impact on ~~Areas of Environmental Concern, adjoining properties or on water quality; air quality;~~
15 ~~coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.~~

16 ~~(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.~~

17 ~~(f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local~~
18 ~~land use plans current at the time of authorization.~~

19 ~~(g)(d)~~ This ~~general~~ permit ~~will shall~~ not be applicable where the Department determines that the proposed
20 modification will result in closure of waters to shellfishing under rules adopted by the Commission for Public Health.

21

22 *History Note: Authority G.S. 113A-107; 113A-118.1;*

23 *Eff. January 1, 1994;*

24 *Amended Eff. August 1, 1998;*

25 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2005 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2005 SPECIFIC CONDITIONS**

4 (a) All proposed work must be carried out within the existing footprint of the development with no increase in the
5 number of **slips nor any slips, and no** change in the existing use. "Existing footprint" is defined as the area delineated
6 by the outer most line of tie pilings, ends of piers, and upland basin or area within an enclosing breakwater, whichever
7 is greater.

8 (b) Modifications to piers and mooring facilities shall not interfere with the access to any riparian **property, property**
9 and shall have a minimum setback of 15 feet between any part of the **pier(s) pier** or **piling(s) pilings** and the adjacent
10 property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided
11 in the rule may be waived by the written agreement of the adjacent riparian **owner(s), owners,** or when two adjoining
12 riparian owners are co-applicants. Should the adjacent property be sold before construction of the **pier(s) pier** or
13 **piling(s) pilings** commences, the applicant shall obtain a written agreement with the new owner waiving the minimum
14 setback and submit it to the Division of Coastal Management prior to initiating any development. The line of division
15 of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the
16 property, then drawing a line perpendicular to a line of the channel so that it intersects with the shore at the point the
17 upland property line meets the water's edge. When shoreline configuration is such that a perpendicular alignment
18 cannot be achieved, the pier shall be aligned to meet the intent of this rule to the maximum extent practicable.

19

20 *History Note: Authority G.S. 113A-107; 113A-118.1;*

21 *Eff. October 1, 1993;*

22 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2101 is readopted with changes as published in 34:09 NCR 759 as follows:

2
3 **SECTION .2100 - GENERAL PERMIT FOR CONSTRUCTION OF SHEETPILE SILL FOR SHORELINE**
4 **PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

5
6 **15A NCAC 07H .2101 PURPOSE**

7 A general permit pursuant to this Section shall allow the construction of Persons seeking to construct offshore parallel
8 sheetpile sills, sills constructed from timber, vinyl, or steel sheetpiles for shoreline protection in conjunction with
9 existing or created coastal wetlands. wetlands shall apply for a general permit under this Section. This permit shall
10 only be applicable in public trust areas Estuarine Waters and Public Trust estuarine Areas. waters according to
11 authority provided in 15A NCAC 07J .1100 and according to the procedures and conditions outlined in this subchapter.
12 This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC
13 with the exception of those shorelines that feature characteristics of Estuarine Shorelines. Such features include the
14 presence of wetland vegetation, lower wave energy, and lower erosion rates than in adjoining Ocean Erodible Area.
15 A Division of Coastal Management representative will make the determination whether the site features characteristics
16 of the Estuarine Shoreline at the time of permit application.

17
18 *History Note: Authority G.S. 113A-107; 113A-118.1;*
19 *Eff. June 1, 1994;*
20 *Amended Eff. February 1, 2009; April 1, 2003; August 1, 2000;*
21 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2102 is readopted with changes as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .2102 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at
5 <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
6 request approval for development. development as defined in G.S. 113A-130(5). The applicant shall provide
7 information on site location, dimensions of the project area, and the applicant's name and address.

8 (b) The applicant shall provide:

9 (1) information on site location, dimensions of the project area, name, and his or her address;

10 (+)(2) confirmation that a written statement has been ~~obtained~~ obtained, signed by the adjacent riparian
11 property ~~owners~~ owners, indicating that they have no objections to the proposed work; or

12 (-)(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
13 proposed work. The notice shall instruct adjacent property owners to provide ~~written any~~ written any comments
14 on the proposed development in writing to the Division of Coastal Management within ~~40~~ ten days
15 of receipt of the ~~notice, and, notice and~~ notice and indicate that no response by the adjacent property owners
16 shall be interpreted as the adjacent property owners having no objection. ~~The~~ The Division staff of
17 Coastal Management shall review all comments and determine, based on their relevance to the
18 potential impacts of the proposed project, if the proposed project can be approved by a General
19 Permit. If the Division of Coastal Management determines that the project exceeds the rules
20 established by the General Permit Process, DCM shall notify the applicant that an application for a
21 major development permit shall be required. If Division staff finds that the comments are worthy of
22 more in-depth review, the Division shall notify the applicant that he or she must submit an
23 application for a major development permit.

24 (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
25 representative so that the proposed sill alignment may be marked. to review the proposed development. Written
26 authorization ~~A permit~~ A permit to proceed with the proposed development shall be issued if the Division representative finds
27 that the application meets all the requirements of this Subchapter. Construction ~~of the sill~~ permitted under this
28 Subsection shall be completed within 120 days of the ~~permit~~ permit issuance ~~of the permit~~ or such permit the general
29 authorization shall ~~expire~~ expire. If the applicant seeks a new permit under this Subsection, the Division of Coastal
30 Management shall ~~and it shall be necessary to~~ re-examine the ~~alignment proposed development~~ alignment proposed development to determine if the
31 general authorization ~~General Permit~~ General Permit may be reissued.

32 (d) Any modification or addition to the permitted project shall require approval from the Division of Coastal
33 Management.

34
35 *History Note:* Authority G.S. 113A-107; 113A-118.1; 113A-118.1(a)(4)

36 *Eff. June 1, 1994;*

37 *Amended Eff. February 1, 2009; October 1, 2007; September 1, 2006; August 1, 2000;*

1 15A NCAC 07H .2103 is readopted **with changes** as published in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2103 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. June 1, 1994;*

9 *Amended Eff. September 1, 2006; August 1, 2000;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2104 is readopted with changes as published in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2104 GENERAL CONDITIONS**

4 ~~(a) This permit authorizes only the construction of sills conforming to the standards herein.~~

5 ~~(a)(b) Individuals Permittees~~ shall allow authorized representatives of the Department of ~~Environment and Natural~~
6 ~~Resources Environmental Quality~~ to make ~~periodic~~ inspections at any time ~~deemed necessary~~ in order to ensure that
7 the activity being performed under authority of this ~~general permit~~ General Permit set forth in this Section is in
8 accordance with the terms and conditions prescribed herein.

9 ~~(b)(c)~~ The placement of sills authorized in this Rule shall not interfere with the established or traditional rights of
10 navigation of the water by the public.

11 ~~(c)(d) This~~ The permit set forth in this Section shall not be applicable to proposed construction where the ~~Division of~~
12 ~~Coastal Management Department~~ has ~~determined,~~ determined based on an initial review of the ~~application,~~ application
13 that notice and review pursuant to G.S. 113A-119 is necessary required because there are unresolved questions
14 concerning the proposed activity's impact on Areas of Environmental Concern, adjoining properties or on water
15 quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights, or
16 public trust rights.

17 ~~(e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.~~

18 ~~(f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local~~
19 ~~land use plans current at the time of authorization.~~

20

21 *History Note: Authority G.S. 113A-107; 113A-118.1;*
22 *RRC Objection due to ambiguity Eff. May 19, 1994;*
23 *Eff. July 1, 1994;*
24 *Amended Eff. February 1, 2009; August 1, 1998;*
25 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2105 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2105 SPECIFIC CONDITIONS**

4 (a) The sill shall be positioned no more than 20 feet waterward of the normal high water or normal water level or 20
5 feet waterward of the waterward edge of existing wetlands at any point along its alignment. For narrow waterbodies
6 (canals, creeks, ~~etc.~~ etc.), the **sheet pile sill alignment** shall not be positioned offshore more than one sixth (1/6) the
7 width of the ~~waterbody.~~ **waterbody at any point along its alignment.**

8 (b) Sills authorized under this General Permit shall be allowed only in waters that average less than three feet in depth
9 along the proposed alignment as measured from the normal high water or normal water level.

10 ~~(c) Where the Division of Coastal Management staff determine that insufficient wetland habitat exists along the~~
11 ~~permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate~~
12 ~~wetland species landward of the sill structure as directed by the Division of Coastal Management staff.~~

13 ~~(d)(c)~~ Construction authorized by this ~~general permit~~ **General Permit** shall be limited to a maximum length of 500
14 feet.

15 ~~(e)(d)~~ The sill shall be constructed with an equal gap between each sheathing board totaling at least one inch of open
16 area every linear foot of sill. The sill shall have at least one five-foot opening at every 100 feet. The sill sections shall
17 be staggered and overlap as long as the five-foot separation between sections is maintained. Overlapping sections
18 shall not overlap more than 10 feet.

19 ~~(f)(e)~~ The height of the sill shall not exceed six inches above normal high water or the normal water level.

20 ~~(g)(f)~~ Offshore sill sections shall be set back 15 feet from the riparian access dividing line. The line of division of
21 riparian access shall be established by drawing a line along the channel or deep water in front of the property, then
22 drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland
23 property line meets the water's edge. The set back may be waived by written agreement of the adjacent riparian
24 owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before
25 construction of the sill begins, the applicant shall obtain a written agreement with the new owner waiving the minimum
26 setback and submit it to the Division of Coastal Management prior to initiating any construction of the sill.

27 ~~(h)(g)~~ Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean high
28 water.

29 ~~(i)(h)~~ No backfill of the sill or any other fill of wetlands, estuarine waters, public trust areas, or highground is
30 authorized by this general permit.

31 ~~(j)(i)~~ No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

32 ~~(k)(j)~~ The sill shall be constructed of vinyl or steel sheet pile, formed concrete, timber, or other suitable equivalent
33 materials approved by the Division of Coastal Management.

34 ~~(l)(k)~~ Perpendicular sections, return walls, or sections that would enclose estuarine waters or public trust areas shall
35 not be allowed under this permit.

1 ~~(m)~~(l) The permittee will maintain the sill ~~in good condition and~~ in conformance with the terms and conditions of this
2 permit or the remaining sill structure shall be removed within 90 days of notification from the Division of Coastal
3 Management.

4

5 *History Note: Authority G.S. 113A-107; G.S. 113A-108; 113A-118.1;*
6 *Eff. June 1, 1994;*
7 *Amended Eff. February 1, 2009; August 1, 2000;*
8 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2201 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **SECTION .2200 – GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND**
4 **BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN**
5 **HAZARD AREAS**

6
7 **15A NCAC 07H .2201 PURPOSE**

8 ~~A general permit pursuant to this Section shall allow the construction of Persons wishing to place~~ freestanding
9 moorings ~~and or~~ bird nesting poles in the ~~estuarine waters~~ **Estuarine Waters** and ~~public trust areas~~ **Public Trust Areas**
10 AECs ~~according to the procedures provided in 15A NCAC 07J .1100 and shall apply for a General Permit~~ according
11 to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and
12 shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the
13 Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower
14 erosion rates than the adjacent Ocean Erodible Area. **A Division of Coastal Management representative will make the**
15 **determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.**

16
17
18 *History Note: Authority G.S. 113A-107; 113A-118.1;*
19 *Eff. February 1, 1996;*
20 *Amended Eff. January 1, 2018; April 1, 2003;*
21 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2202 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2202 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
5 request approval for development **as defined in G.S. 113A-130(5), pursuant to Paragraph (b) of this Rule.**

6
7 (b) The applicant shall provide:

8 (1) information on site location, dimensions of the project area, ~~and applicant name name,~~ and his or
9 her address; ~~and~~

10 (2) ~~a dated plat(s) showing existing and proposed development; and confirmation that a written~~
11 ~~statement has been obtained, signed by the adjacent riparian property owners indicating that they~~
12 ~~have no objections to the proposed work; or~~

13 ~~(3) evidence that:~~

14 ~~(A) a written statement has been obtained and signed by the adjacent riparian property owners~~
15 ~~indicating that they have no objections to the proposed work; or~~

16 ~~(B) the adjacent riparian property owners have been notified by certified mail of the proposed~~
17 ~~work. The notice shall instruct adjacent property owners to provide any comments on the~~
18 ~~proposed development in writing for consideration by permitting officials to the Division~~
19 ~~of Coastal Management within 10 calendar days of receipt of the notice, and, indicate that~~
20 ~~no response shall be interpreted as no objection. Division of Coastal Management staff~~
21 ~~shall review all comments. If the Division of Coastal Management determines that:~~

22 ~~(i) the comments are relevant to the potential impacts of the proposed project; and~~

23 ~~(ii) the Division of Coastal Management shall review all comments and determine,~~
24 ~~based on their relevance to the potential impacts of the proposed project, if the~~
25 ~~proposed project may be approved by a General Permit. If the Division of Coastal~~
26 ~~Management determines that the project exceeds the guidelines established by the~~
27 ~~General Permit process provided in 15A NCAC 07J .1100, the Division shall~~
28 ~~notify the applicant that an application for a major development permit shall be~~
29 ~~required.~~

30 ~~(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the~~
31 ~~proposed work. The notice shall instruct adjacent property owners to provide any comments on the~~
32 ~~proposed development in writing to the Division of Coastal Management within 10 days of receipt~~
33 ~~of the notice and indicate that no response by the adjacent property owners shall be interpreted as~~
34 ~~the adjacent property owners having no objection. Division staff shall review all comments and~~
35 ~~determine, based on their relevance to the potential impacts of the proposed project, if the proposed~~
36 ~~project can be approved by a General Permit. If Division staff finds that the comments are worthy~~

1 of more in-depth review, the Division shall notify the applicant that he or she must submit an
2 application for a major development permit.

3 (c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the
4 applicant shall be provided a copy the rules of this Section. Construction authorized by this permit shall be completed
5 within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or
6 continue construction. No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal
7 Management representative to review the proposed development. A permit to proceed with the proposed development
8 shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter.
9 Construction permitted under this Subsection shall be completed within 120 days of the permit issuance or such permit
10 shall expire. If the applicant seeks a new permit under this Subsection, the Division of Coastal Management shall re-
11 examine the proposed development to determine if the General Permit may be reissued.

12 (d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal
13 Management.

14
15 *History Note: Authority G.S. 113A-107; 113A-118.1;*
16 *Eff. February 1, 1996;*
17 *Amended Eff. January 1, 2018; August 1, 2007;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2203 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2203 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1;*

8 *Eff. February 1, 1996;*

9 *Amended Eff. September 1, 2006; August 1, 2000;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2204 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2204 GENERAL CONDITIONS**

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

7 (b) A "bird nesting pole" is any pole or piling erected, with a platform on top, for the purpose of attracting birds for
8 nesting.

9 (c) Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian
10 landowner(s) in whose name the permit is ~~issued,~~ **issued** and shall not provide either leased or rented moorings or any
11 other commercial services.

12 ~~(d)(g)~~ **Individuals Permitees** shall allow authorized representatives of the Department of Environmental Quality to
13 make inspections **at any time** in order to **be sure ensure** that the activity being performed under the authority of this
14 ~~general permit~~ **General Permit set forth in this Section** is in accordance with the terms and conditions prescribed
15 herein.

16 ~~(e)(d) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence~~
17 ~~of freestanding Freestanding moorings or bird nesting pole poles authorized by this permit. permit shall not interfere~~
18 ~~with navigation or use of the waters by the public.~~

19 ~~(f)(e) This The general permit set forth in this Section may not be applicable to proposed construction when the~~
20 ~~Department has determined determines that based on an initial review of the application that notice and review~~
21 ~~pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's~~
22 ~~impact on Areas of Environmental Concern.~~

23 ~~proposal might affect the quality of the human environment or endanger adjoining properties. In those cases,~~
24 ~~individual permit applications and review of the proposed project shall be required according to 15A NCAC 07J.~~

25 ~~(f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local~~
26 ~~land use plans current at the time of authorization.~~

27 ~~(g) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections~~
28 ~~in order to be sure that the activity being performed under the authority of this general permit is in accordance with~~
29 ~~the terms and conditions prescribed herein.~~

30
31 *History Note: Authority G.S. 113A-107; 113A-118.1;*
32 *Eff. February 1, 1996;*
33 *Amended Eff: January 1, 2018;*
34 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2205 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2205 SPECIFIC CONDITIONS**

4 (a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high
5 water **line, line** or the normal water **line, whichever is applicable. line.**

6 ~~(b) Freestanding moorings and bird nesting poles along federally maintained channels must meet US Army Corps of
7 Engineers guidelines.~~

8 ~~(c)~~(b) Freestanding moorings in no case shall extend more than 1/4 the width of a natural water body or man-made
9 canal or basin.

10 ~~(d)~~(c) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel
11 to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall
12 **have have** a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that
13 they intersect the shoreline. The minimum setbacks provided in this Rule may be waived by the written agreement of
14 the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property
15 be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving
16 the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of
17 freestanding moorings. The line of division of areas of riparian access shall be established by drawing a line along the
18 channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it
19 intersects with the shore at the point the upland property line meets the water's edge.

20 ~~(e)~~(d) The total number of docking or mooring facilities to be authorized by this General Permit shall not exceed two
21 per property.

22 ~~(f)~~(e) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a permitted bird
23 nesting pole shall require additional authorization from the Division of Coastal Management.

24 ~~(g)~~(f) Freestanding moorings and bird nesting poles shall not interfere with shellfish franchises or leases. Applicants
25 for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the permit
26 application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

27 ~~(h)~~(g) Freestanding moorings shall not be constructed in a designated Primary Nursery Area as defined in 15A NCAC
28 07H .0208(a)(4) with less than two feet of water at normal low water level or normal water level under the General
29 Permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources
30 Commission.

31 ~~(i)~~(h) Freestanding moorings located over shellfish beds or submerged aquatic vegetation ~~(as as~~ defined by the Marine
32 Fisheries ~~Commission) Commission~~ may be constructed without prior consultation from the Division of Marine
33 Fisheries or the Wildlife Resources Commission if the following two conditions are met:

- 34 (1) water depth at the freestanding mooring location is equal to or greater than two feet of water at
35 normal low water level or normal water level; and
36 (2) the freestanding mooring is located to minimize the area of submerged aquatic vegetation or
37 shellfish beds impacted under the structure as determined by the Division of Coastal Management.

1 ~~(j)~~(i) Freestanding moorings and bird nesting poles shall not be established in submerged utility crossing areas or in
2 a manner that interferes with the operation of an access through any bridge.

3 ~~(k)~~(j) Freestanding moorings and bird nesting poles shall be marked or colored for the life of the ~~mooring(s)~~ ~~moorings~~
4 ~~and poles~~ in compliance with G.S. 75A-15 and the applicant shall contact the U.S. Coast Guard and N.C. Wildlife
5 ~~Resource Resources~~ Commission to ensure compliance. Permanent reflectors shall be attached to the structure in order
6 to make it more visible during hours of darkness or inclement weather.

7 ~~(l)~~(k) Freestanding moorings shall bear owner's name, vessel State registration ~~numbers numbers~~, or U.S. Customs
8 Documentation numbers. Required identification shall be legible for the life of the ~~mooring(s)-moorings~~.

9 ~~(m)~~(l) The type of material used to anchor a proposed mooring ~~buoy(s)~~ ~~buoy~~ shall be non-polluting and of sufficient
10 weight and design to anchor the buoy and vessel.

11 ~~(n)~~(m) Mooring buoys authorized by this General Permit shall be a minimum 12" in diameter or otherwise be designed
12 to be recognized and not present a hazard to navigation.

13 ~~(o)~~(n) The platform located at the apex of the bird nesting pole shall not exceed ~~3'x 3'~~ ~~three feet by three feet~~ and shall
14 not have sides.

15 ~~(p)~~(o) This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal
16 permit requirements are met prior to implementation of the project, including G.S. 113A-107(a), G.S. 113A-118(d)(1)
17 or G.S. 113A-120(b1)(4).

18

19 *History Note: Authority G.S. 113A-107; 113A-118.1;*
20 *Eff. February 1, 1996;*
21 *Amended Eff. January 1, 2018;*
22 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2301 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **SECTION .2300 - GENERAL PERMIT FOR REPLACEMENT OF EXISTING BRIDGES AND**
4 **CULVERTS IN ESTUARINE WATERS, ESTUARINE AND PUBLIC TRUST SHORELINES, PUBLIC**
5 **TRUST AREAS, AND COASTAL WETLANDS**

6
7 **15A NCAC 07H .2301 PURPOSE**

8 A ~~general permit for replacement of person wishing to replace~~ existing bridges and culverts in estuarine waters,
9 estuarine and public trust shorelines, public trust areas, and coastal wetlands **AECs**, shall ~~be obtained~~ **apply for a**
10 **General Permit** pursuant to the rules in ~~15A NCAC 7J .1100 and this Section~~ **Section** ~~to replace existing bridges and~~
11 ~~culverts in estuarine water, estuarine and public trust shorelines, public trust areas and coastal wetland AECs.~~

12
13 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
14 *Eff. June 1, 1996;*
15 *Amended Eff. August 1, 2000;*
16 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2302 is readopted with changes as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2302 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at
5 <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
6 request approval for development as defined in G.S. 113A-130(5).

7 (a)(b) The applicant shall ~~contact the Division of Coastal Management (Division) and~~ provide:

8 (1) ~~information on the~~ site location, ~~dimensions of the~~ project ~~description, area, name~~ and his or her
9 ~~name, address and telephone number; address; and~~

10 ~~(2) a dated plat(s) showing existing and proposed development; and~~

11 ~~(3)(2) confirmation that: that a written statement has been obtained, signed by the adjacent riparian~~
12 ~~property owners, indicating that they have no objections to the proposed work; or~~

13 ~~(A) a written statement has been obtained and signed by the adjacent riparian property owners~~
14 ~~indicating that they have no objections to the proposed work; or~~

15 ~~(B) the adjacent riparian property owners have been notified by certified mail of the proposed~~
16 ~~work. Such notice shall instruct adjacent property owners to provide any comments on the~~
17 ~~proposed development in writing for consideration by permitting officials to the Division~~
18 ~~of Coastal Management within 10 days of receipt of the notice and indicate that no response~~
19 ~~shall be interpreted as no objection. Division staff shall review all comments. If the~~
20 ~~Division determines that:~~

21 ~~(i) the comments are relevant to the potential impacts of the proposed project; and~~

22 ~~(ii) the permitting issues raised by the comments require a more detailed review, then~~
23 ~~the Division shall notify the applicant that he or she shall be required to submit an~~
24 ~~application for a major development permit.~~

25 ~~(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the~~
26 ~~proposed work. The notice shall instruct adjacent property owners to provide any comments on the~~
27 ~~proposed development in writing to the Division of Coastal Management within ten days of receipt~~
28 ~~of the notice and indicate that no response by the adjacent property owners will be interpreted as the~~
29 ~~adjacent property owners having no objection. Division staff shall review all comments and~~
30 ~~determine, based on their relevance to the potential impacts of the proposed project, if the proposed~~
31 ~~project can be approved by a General Permit. If Division staff finds that the comments are worthy~~
32 ~~of more in-depth review, the Division shall notify the applicant that he or she must submit an~~
33 ~~application for a major development permit.~~

34 ~~(b) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the~~
35 ~~applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within~~
36 ~~two years of permit issuance or the general authorization shall expire and a new permit shall be required to begin or~~

1 ~~continue construction. For North Carolina Department of Transportation projects identified in the Transportation~~
2 ~~Improvement Program this permit shall not expire pursuant to G.S. 136-44.7B.~~

3 (c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management
4 ~~representative. Written authorization representative to review the proposed development. A permit~~ to proceed with
5 the proposed development shall be issued ~~during this visit~~ if the Division representative finds that the application
6 meets all the requirements of this Subchapter. ~~Construction permitted under this Subsection shall be completed within~~
7 ~~120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Subsection, the~~
8 ~~Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may~~
9 ~~be reissued. Pursuant to G.S. 136-44.7B, permits issued to the North Carolina Department of Transportation for~~
10 ~~projects identified in the Transportation Improvement Program shall not expire.~~

11 ~~(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal~~
12 ~~Management.~~

13
14
15 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
16 *Eff. June 1, 1996;*
17 *Amended Eff. May 1, 2010;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2303 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2303 PERMIT FEE**

4 The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by inter-departmental
5 fund transfer, **check check**, or money order made payable to the Department of **Environment and Natural Resources**.
6 **Environmental Quality**.

7

8 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

9 *Eff. June 1, 1996;*

10 *Amended Eff. May 1, 2010; September 1, 2006; August 1, 2000;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2304 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2304 GENERAL CONDITIONS**

4 (a) Projects authorized by this permit shall be demolition, removal, and replacement of existing bridges and culverts
5 along the existing alignment and conforming to the standards in this Rule. This permit shall be applicable only to
6 single bridge and culvert projects and shall not authorize temporary fill causeways or temporary bridges that may be
7 associated with bridge replacement projects.

8 (b) The permittee shall allow authorized representatives of the Department of **Environment and Natural Resources**
9 **Environmental Quality (Department)** to make **periodic** inspections at any time **deemed necessary** in order to ensure
10 that the activity being performed under authority of this **general permit General Permit** is in accordance with the terms
11 and conditions prescribed **herein, in this Rule.**

12 (c) ~~This~~ **The general** permit **set forth in this Section** shall not be applicable to proposed construction where the
13 Department **determines determined based on an initial review of the application that notice and review pursuant to**
14 **G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas**
15 **of Environmental Concern. authorization may be warranted, but that the proposed activity might significantly affect**
16 **the quality of human environment or unnecessarily endanger adjoining properties.**

17 ~~(d) This general permit shall not be applicable to proposed construction where the Department determines that the~~
18 ~~proposed activity would have significant adverse impacts on water quality or historic, cultural, scenic, fisheries, or~~
19 ~~recreational resources.~~

20 ~~(e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.~~

21 ~~(f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local~~
22 ~~land use plans.~~

23 ~~(g) This permit shall not apply to projects that require work channels.~~

24 ~~(h)(d)~~ Review of individual project requests shall be coordinated with the Division of Marine Fisheries (DMF) and
25 the Wildlife Resources Commission (WRC). This may result in a construction moratorium during periods of
26 significant biological productivity or critical life stages as determined by the WRC and DMF.

27 ~~(i)(e)~~ Development under this permit shall be carried out within Department of Transportation (DOT) right-of-ways
28 or on lands under the ownership of the applicant in the case of a non-DOT project.

29 ~~(j)(f)~~ Bridge and culvert replacements shall be designed to minimize any adverse impacts to potential navigation or
30 use of the waters by the public.

31 ~~(k)(g) This permit shall apply only to projects involving replacement of bridges and culverts currently serving their~~
32 ~~intended function.~~

33
34 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*

35 *Eff. June 1, 1996;*

36 *Amended Eff. May 1, 2010;*

37 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2305 is readopted with changes as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2305 SPECIFIC CONDITIONS**

4 (a) This ~~general permit~~ **General Permit** is applicable to bridge replacement projects spanning no more than 400 feet
5 of estuarine water, public trust area, and coastal wetland AECs.

6 (b) Existing roadway deck width shall not be expanded to create additional lanes, with the exception that an existing
7 one lane bridge may be expanded to two lanes ~~where the Department of Environment and Natural Resources~~
8 ~~Environmental Quality determines that authorization is warranted and provided~~ the proposed project does not
9 ~~significantly affect the quality of the human and natural environment or unnecessarily endangers adjoining properties.~~
10 ~~create significant adverse impacts.~~

11 (c) Replacement of existing bridges with new bridges shall not reduce vertical or horizontal navigational clearances.

12 (d) All demolition debris shall be disposed of landward of all wetlands and the ~~normal water level (NWL)~~ **Normal**
13 **Water Level** or **Normal High Water** ~~normal high water (NHW) level~~ **(NHW) level** (as as defined in ~~15A NCAC 07H .0106~~, **15A**
14 **NCAC 07H .0106**, and shall employ soil stabilization measures to prevent entry of sediments in the adjacent water
15 bodies or wetlands.

16 (e) Bridges and culverts shall be designed to allow passage of anticipated high water flows.

17 (f) Measures sufficient to restrain sedimentation and erosion shall be implemented at each site.

18 (g) Bridge or culvert replacement activities involving excavation or fill in wetlands, public trust areas, and estuarine
19 waters shall meet the following conditions:

20 (1) Replacing bridges with culverts shall not be allowed in primary nursery areas as defined by the
21 Marine Fisheries or Wildlife Resources Commissions.

22 (2) The total area of public trust area, estuarine waters, and wetlands to be excavated or filled shall not
23 exceed 2,500 square feet except that the coastal wetland component shall not exceed 750 square
24 feet.

25 (3) Culverts shall not be used to replace bridges with open water spans greater than 50 feet.

26 (4) There shall be no temporary placement or double handling of excavated or fill materials within
27 waters or vegetated wetlands.

28 (5) No excavated or fill material shall be placed in any wetlands or surrounding waters outside of the
29 alignment of the fill area indicated on the work ~~plat(s)~~ **plat.**

30 (6) All excavated materials shall be confined above **Normal Water Level** ~~NWL~~ or **Normal High Water**
31 **NHW** and landward of any wetlands behind dikes or other retaining structures to prevent spill-over
32 of solids into any wetlands or surrounding waters.

33 (7) No bridges with a clearance of four feet or greater above the NWL or NHW shall be allowed to be
34 replaced with ~~culvert(s)~~ **culverts** unless the culvert design maintains the existing water depth,
35 vertical clearance and horizontal clearance.

36 (8) If a bridge is being replaced by a ~~culvert(s)~~ **culvert** then the width of the waterbody shall not be
37 decreased by more than 40 percent.

1 (9) All pipe and culvert inverts placed within the Public Trust or the Estuarine Waters AECs shall be
2 buried at least one foot below normal bed elevation to allow for passage of water and aquatic life.
3 Culverts placed in wetlands are not subject to this requirement.

4
5 *History Note:* *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
6 *Eff. June 1, 1996;*
7 *Amended Eff. May 1, 2010;*
8 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2401 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2

3 **SECTION .2400 - GENERAL PERMIT FOR PLACEMENT OF RIPRAP REVETMENTS FOR WETLAND**
4 **PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS**

5

6 **15A NCAC 07H .2401 PURPOSE**

7 ~~The general permit for placement of riprap revetments for wetland protection in estuarine and public trust waters shall~~
8 ~~allow the placement of~~ **Persons wishing to construct** riprap revetments **for wetland protection in estuarine and public**
9 **trust waters,** immediately adjacent to and waterward of the wetland ~~toe-toe,~~ **shall apply for a General Permit under this**
10 **Section.** ~~This permit shall only be applicable in public trust areas and estuarine waters according to authority provided~~
11 ~~in 15A NCAC 07J .1100 and according to the rules in this Section.~~ This permit shall not apply to oceanfront shorelines
12 or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those portions of shoreline that
13 feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave
14 energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

15

16 *History Note: Authority G.S. 113A-107; 113A-118.1;*
17 *Eff. August 1, 2000;*
18 *Amended Eff. February 1, 2009; April 1, 2003;*
19 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2402 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2402 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management **at**
5 **<https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51>** and
6 request approval for **development, development as defined in G.S. 113A-130(5). The applicant shall provide**
7 **information on site location, dimensions of the project area, and the applicant's name and address.**

8 (b) The applicant shall provide:

9 **(1) the site location, dimensions of the project area, name and his or her address;**

10 **(+)(2) confirmation that a written statement has been obtained obtained, signed by the adjacent riparian**
11 **property owners owners, indicating that they have no objections to the proposed work; or**

12 **(-)(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the**
13 **proposed work. The notice shall instruct adjacent property owners to provide any comments on the**
14 **proposed development in writing for consideration by permitting officials to the Division of Coastal**
15 **Management within 10 ten days of receipt of the notice, and, notice and indicate that no response**
16 **by the adjacent property owners shall be interpreted as the adjacent property owners having no**
17 **objection. The Division staff of Coastal Management shall review all comments and determine,**
18 **based on their relevance to the potential impacts of the proposed project, if the proposed project can**
19 **be approved by the General Permit process. a General Permit. If not, the applicant shall be notified**
20 **that an application for a major development permit shall be required. If Division staff finds that the**
21 **comments are worthy of more in-depth review, the Division shall notify the applicant that he or she**
22 **must submit an application for a major development permit.**

23 (c) **No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management**
24 **representative so that the structure location can be marked. Written authorization to proceed with the proposed**
25 **development shall be issued during this visit. Construction of the structure shall be completed within 120 days of the**
26 **issuance of the permit or the general authorization expires and it shall be necessary to re-examine the alignment to**
27 **determine if the general authorization may be reissued. No work shall begin until an on-site meeting is held with the**
28 **applicant and a Division of Coastal Management representative to review the proposed development. A permit to**
29 **proceed with the proposed development shall be issued if the Division representative finds that the application meets**
30 **all the requirements of this Subchapter. Construction shall be completed within 120 days of permit issuance or such**
31 **permit shall expire. If the applicant seeks a new permit under this Subsection, the Division of Coastal Management**
32 **shall re-examine the proposed development to determine if the General Permit may be reissued.**

33 (d) **Any modification or addition to the permitted project shall require approval from the Division of Coastal**
34 **Management.**

35
36
37 *History Note: Authority G.S. 113A-107; 113A-118.1;*

- 1 *Eff. August 1, 2000;*
- 2 *Amended Eff. February 1, 2009; October 1, 2007;*
- 3 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2403 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2403 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. August 1, 2000;*

9 *Amended Eff. September 1, 2006;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2404 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2404 GENERAL CONDITIONS**

4 (a) This permit authorizes only the construction of wetland protection structures conforming to the standards herein.

5 (b) **Individuals Permittees** shall allow authorized representatives of the Department of **Environment and Natural**
6 **Resources Environmental Quality** to make **periodic** inspections at any time **deemed necessary** in order to ensure that
7 the activity being performed under authority of this ~~general permit~~ **General Permit set forth in this Section** is in
8 accordance with the terms and conditions prescribed herein.

9 (c) The placement of riprap revetments authorized in this Rule shall not interfere with the established or traditional
10 rights of navigation of the waters by the public.

11 (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has
12 determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
13 **necessary required** because there are unresolved questions concerning the proposed activity's impact on **Areas of**
14 **Environmental Concern, adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic**
15 **sites; wildlife; fisheries resources; or public trust rights.**

16 ~~(e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.~~

17 ~~(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and~~
18 ~~local land use plans current at the time of authorization.~~

19

20 *History Note: Authority G.S. 113A-107; 113A-118.1;*

21 *Eff. August 1, 2000;*

22 *Amended Eff. February 1, 2009;*

23 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2405 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2405 SPECIFIC CONDITIONS**

4 (a) This **general permit** **General Permit** shall only be applicable along shorelines possessing wetlands, which exhibit
5 an identifiable escarpment.

6 (b) The structure shall be constructed of granite, marl, riprap, concrete without exposed rebar, or other suitable
7 equivalent materials approved by the Division of Coastal Management.

8 (c) The height of the erosion escarpment shall not exceed three feet.

9 (d) The riprap shall be placed immediately waterward of the erosion escarpment.

10 (e) The riprap revetment shall be positioned so as not to exceed a maximum of six feet waterward of the erosion
11 escarpment at any point along its alignment with a slope no flatter than three feet horizontal per one foot vertical and
12 no steeper than one and one half feet horizontal per one foot vertical.

13 (f) The riprap shall be positioned so as not to exceed a maximum of six inches above the elevation of the adjacent
14 wetland substrate or escarpment.

15 ~~(g) Where the Division of Coastal Management determines that insufficient wetland vegetation exists along the~~
16 ~~permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate~~
17 ~~wetland vegetation landward of the riprap revetment as directed by the Division of Coastal Management.~~

18 ~~(h)(g)~~ Construction authorized by this general permit will be limited to a maximum length of 500 feet.

19 ~~(i)(h)~~ No backfill or any other fill of wetlands, submerged aquatic vegetation, estuarine waters, public trust areas, or
20 highground areas is authorized by this general permit.

21 ~~(j)(i)~~ No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

22 ~~(k)(j)~~ Riprap material used for revetment construction shall be free from loose dirt or any pollutant and be of a size
23 sufficient to prevent its movement from the site by wave action or currents.

24 ~~(l)(k)~~ If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, temporary
25 construction mats shall be utilized for the **area(s)area** to be crossed. The temporary mats shall be removed immediately
26 upon completion of construction of the riprap structure.

27 ~~(m)(l)~~ The permittee shall maintain the structure **in good condition and** in conformance with the terms and conditions
28 of this permit or the remaining riprap revetment shall be removed within 90 days of notification from the Division of
29 Coastal Management.

30
31 *History Note: Authority G.S. 113A-107; **G.S. 113A-107; G.S. 113A-108;**113A-118.1;*

32 *Eff. August 1, 2000;*

33 *Amended Eff. February 1, 2009;*

34 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2601 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION OF MITIGATION BANKS AND IN-LIEU**
4 **FEE MITIGATION PROJECTS**

5
6 **15A NCAC 07H .2601 PURPOSE**

7 **The general permit in this Section shall allow for the construction of Persons seeking to construct** mitigation banks
8 and in-lieu fee mitigation ~~projects.~~ **projects shall apply for a General Permit** according to the rules in this Section. This
9 permit shall be applicable only for activities resulting in net increases in aquatic resource functions and ~~services.~~
10 **services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-**
11 **136.** These activities include:

- 12 (1) restoration;
13 (2) enhancement;
14 (3) establishment of tidal and non-tidal wetlands and riparian areas;
15 (4) restoration and enhancement of non-tidal streams and other non-tidal open waters; and
16 (5) rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters.

17 This permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters
18 adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature
19 characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy,
20 and lower erosion rates than in the adjoining Ocean Erodible Area. **A Division of Coastal Management representative**
21 **will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit**
22 **application.**

23
24
25 *History Note: Authority G.S. 113A-107; 113A-118.1;*
26 *Eff. October 1, 2004;*
27 *Amended Eff. October 1, 2014;*
28 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2602 is readopted with changes as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2602 APPROVAL PROCEDURES**

4 (a) The applicant shall contact the Division of Coastal Management at
5 <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
6 request approval for development. development as defined in G.S. 113A-130(5). The applicant shall provide
7 information in writing on site location, a mitigation plan outlining the proposed mitigation activities, and the
8 applicant's name and address.

9 (b) ~~The applicant shall provide either confirmation that a written statement has been obtained and signed by the~~
10 ~~adjacent riparian property owners indicating that they have no objections to the proposed work, or confirmation that~~
11 ~~the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notices shall~~
12 ~~instruct adjacent property owners to provide any comments on the proposed development in writing for consideration~~
13 ~~to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response shall be~~
14 ~~interpreted as no objection. provide:~~

15 (1) the site location, dimensions of the project area, name and his or her address; and

16 (2) confirmation ~~that~~ that a written statement has been obtained, signed by the adjacent riparian
17 property owners, indicating that they have no objections to the proposed work; or

18 (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
19 proposed work. The notice shall instruct adjacent property owners to provide any comments on the
20 proposed development in writing for to the Division of Coastal Management within ten days of
21 receipt of the notice and indicate that no response by the adjacent property owners will be interpreted
22 as the adjacent property owners having no objection. Division staff shall review all comments and
23 determine, based on their relevance to the potential impacts of the proposed project, if the proposed
24 project can be approved by a General Permit. If Division staff finds that the comments are worthy
25 of more in-depth review, the Division shall notify the applicant that he or she must submit an
26 application for a major development permit.

27 ~~(c) The Division of Coastal Management shall review all comments received from adjacent property owners and~~
28 ~~determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the~~
29 ~~requirements of the rules in this Section.~~

30 ~~(d)(c)~~ No work shall begin until a meeting is held with the applicant and the a Division of Coastal Management
31 representative to review the proposed development, and written authorization to proceed with the proposed
32 development is issued in compliance with this Rule. A permit to proceed with the proposed development shall be
33 issued if the Division representative finds that the application meets all the requirements of this Subchapter.
34 Construction of the mitigation site permitted under this Subsection shall start within 365 days of the issue ~~date of the~~
35 general permit issuance or the general such permit shall expire, expire If the applicant seeks a new permit under this
36 Subsection, the Division of Coastal Management and it shall be necessary to re-examine the proposed development
37 for any changes to determine if the General Permit ~~general permit~~ shall be reissued.

1 (d) Any modification or addition to the permitted project shall require approval from the Division of Coastal
2 Management.

3

4 *History Note: Authority G.S. 113A-107; 113A-118.1;*

5 *Eff. October 1, 2004;*

6 *Amended Eff. October 1, 2014;*

7 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2603 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2603 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. October 1, 2004;*

9 *Amended Eff. September 1, 2006;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2604 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2604 GENERAL CONDITIONS**

4 (a) The permit in this Section authorizes only those activities associated with the construction of mitigation banks and
5 in-lieu fee mitigation projects.

6 (b) **Individuals Permittees** shall allow representatives of the Department of **Environment and Natural Resources**
7 **Environmental Quality** to make ~~periodic~~ inspections at any time ~~deemed necessary~~ in order to ~~be sure~~ **ensure** that the
8 activity being performed under authority of this ~~general permit~~ **General Permit set forth in this Section** is in accordance
9 with the terms and conditions **prescribed herein.** ~~of the rules of this Section.~~

10 (c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the
11 permittee to prevent the use by the public of all navigable waters at or adjacent to the development authorized pursuant
12 to the rules of this Section.

13 (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has
14 determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
15 **necessary required** because there are unresolved questions concerning the proposed activity's impact **on Areas of**
16 **Environmental Concern.** ~~adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic~~
17 ~~sites, wildlife, fisheries resources, or public trust rights.~~

18 (e) At the discretion of the Division of Coastal Management, review of individual project requests shall be coordinated
19 with the Department of **Environment and Natural Resources Environmental Quality** to determine if a construction
20 moratorium during periods of significant biological productivity or critical life stages of fisheries resources is
21 necessary to protect those resources.

22 ~~(f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.~~

23 ~~(g) Development carried out under this permit shall be consistent with all local rules, regulations, laws, or land use~~
24 ~~plans of the local government in which the development takes place.~~

25
26 *History Note: Authority G.S. 113A-107; 113A-118.1;*
27 *Eff. October 1, 2004;*
28 *Amended Eff. October 1, 2014;*
29 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2605 is readopted **with changes** as published in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2605 SPECIFIC CONDITIONS**

4 (a) The ~~general permit~~ **General Permit** in this Section shall be applicable only for the construction of mitigation banks
5 or in-lieu fee mitigation projects.

6 (b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.

7 (c) The crossing of wetlands in transporting equipment shall be avoided or minimized to the maximum extent
8 practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary,
9 track and ~~low-pressure~~ **low-pressure** equipment or temporary construction mats shall be utilized for the ~~area(s)~~**area** to
10 be crossed. The temporary mats shall be removed immediately upon completion of construction.

11 (d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control
12 structures, or those structures needed for site monitoring or shoreline stabilization.

13 (e) ~~This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for~~
14 ~~any particular project.~~ The use of any portion of the site as compensatory mitigation for future projects shall be
15 determined in accordance with applicable regulatory policies and procedures.

16 (f) The development authorized pursuant to this general permit shall result in a net increase in ~~coastal resource~~
17 ~~functions and values.~~ **aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33**
18 **U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136.**

19 (g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state through
20 conservation easement, deed ~~restriction~~ **restriction**, or other appropriate instrument attached to the title for the subject
21 property and shall be owned by the permittee or its designee.

22 (h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared by the permittee
23 or its designee for the authorized mitigation bank or in-lieu fee project site.

24 (i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the
25 likelihood of flooding any adjacent property.

26 (j) Appropriate sedimentation and erosion control devices, ~~measures~~ **measures**, or structures such ~~as~~ silt fences,
27 diversion swales or berms, ~~and sand fences, etc. fences~~ shall be implemented to ensure that eroded materials do not
28 enter adjacent wetlands, ~~watercourses~~ **watercourses**, and property.

29 (k) If one or more contiguous acre of property is to be graded, ~~excavated~~ **excavated**, or filled, the applicant shall
30 submit an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land
31 Quality Section. The plan shall be approved prior to commencing the land-disturbing activity.

32 ~~(l) All fill material shall be free of any pollutants, except in trace quantities.~~

33
34 *History Note: Authority G.S. 113A-107; 113A-118.1;*
35 *Eff. October 1, 2004;*
36 *Amended Eff. October 1, 2014; August 1, 2012 (see S.L. 2012-143, s.1.(f));*
37 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2701 is readopted **with changes** as published in 34:09 NCR 761 as follows:

2
3 **SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF MARSH SILLS**

4
5 **15A NCAC 07H .2701 PURPOSE**

6 ~~A general permit under this Section shall allow for the construction of~~ **Persons seeking to construct** marsh sills for
7 wetland enhancement and shoreline stabilization in estuarine and public trust waters **shall apply for a General Permit**
8 ~~as set out in 15A NCAC 07J .1100 and~~ according to the rules in this Section. Marsh sills are defined as sills that are
9 shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not
10 apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions
11 of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features
12 include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean
13 Erodible Area. **A Division of Coastal Management representative will make the determination whether the site features**
14 **characteristics of the Estuarine Shoreline at the time of permit application.**

15
16
17 *History Note: Authority G.S. 113A-107; 113A-118.1;*
18 *Temporary Adoption Eff. June 15, 2004;*
19 *Eff. April 1, 2005;*
20 *Temporary Amendment Eff. April 1, 2019;*
21 *Amended Eff. July 1, 2019;*
22 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2702 is readopted with changes as published in 34:09 NCR 761 as follows:

2
3 **15A NCAC 07H .2702 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at
5 <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and
6 request approval for ~~development.~~ development as defined in G.S. 113A-130(5). ~~The applicant shall provide~~
7 ~~information on site location, dimensions of the project area, and applicant name and address.~~

8 (b) The applicant shall provide:

9 ~~(1)~~ (1) the site location, dimensions of the project area, name, and his or her address; and

10 ~~(+)(2)~~ (2) confirmation that a written statement has been ~~obtained~~ obtained, signed by the adjacent riparian
11 property ~~owners~~ owners, indicating that they have no objections to the proposed work; or

12 ~~(-)(3)~~ (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
13 proposed work. The notice shall instruct adjacent property owners to provide any comments on the
14 proposed development in writing for consideration ~~by permitting officials~~ to the Division of Coastal
15 Management within ~~10 ten~~ 10 days of receipt of the ~~notice, and, notice and~~ indicate that no response
16 ~~by the adjacent property owners~~ will be interpreted as the adjacent property owners having no
17 objection. Division staff shall review all comments and determine, based on their relevance to the
18 potential impacts of the proposed project, if the proposed project can be approved by a General
19 Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division
20 shall notify the applicant that he or she must submit an application for a major development permit.

21 ~~(e) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the~~
22 ~~proposed project, if the proposed project can be approved by a General Permit.~~

23 ~~(+)(c)~~ (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
24 representative to review the proposed development. ~~Written authorization~~ A permit to proceed with the proposed
25 development shall be issued if the Division representative finds that the application meets all the requirements of this
26 Subchapter. Construction permitted under this Subsection shall be completed within 120 days of ~~the permit~~ the permit issuance
27 ~~of the general authorization permit or the authorization such permit shall expire expire.~~ If the applicant seeks a new
28 permit under this Subsection, the Division of Coastal Management and it shall be necessary to re-examine the proposed
29 development to determine if the General ~~general authorization Permit~~ may be reissued.

30 (d) Any modification or addition to the permitted project shall require approval from the Division of Coastal
31 Management.

32
33 *History Note: Authority G.S. 113A-107; 113A-118.1;*
34 *Temporary Adoption Eff. June 15, 2004;*
35 *Eff. April 1, 2005;*
36 *Amended Eff. October 1, 2007;*
37 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2703 is readopted **with changes** as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07H .2703 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Temporary Adoption Eff. June 15, 2004;*

9 *Eff. April 1, 2005;*

10 *Amended Eff. September 1, 2006;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2704 is readopted with changes as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07H .2704 GENERAL CONDITIONS**

4 ~~(a) Structures authorized by a permit issued pursuant to this Section shall be marsh sills conforming to these Rules.~~

5 ~~(b)(a) Individuals Permittees~~ shall allow authorized representatives of the Department of Environmental Quality
6 (DEQ) to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed
7 under authority of this ~~general permit~~ General Permit set forth in this Section is in accordance with the terms and
8 conditions prescribed herein, ~~in these Rules.~~

9 ~~(c)(b)~~ The placement of marsh sills authorized in these Rules shall not interfere with the established or traditional
10 rights of navigation of the waters by the public.

11 ~~(d)(c)~~ This ~~The~~ permit set forth in this Section shall not be applicable to proposed construction where the Department
12 has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
13 necessary because there are unresolved questions concerning the proposed activity's impact Areas of Environmental
14 Concern, ~~on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife,~~
15 ~~fisheries resources, or public trust rights.~~

16 ~~(e)~~ ~~This permit does not eliminate the need to obtain any other required state, local, or federal authorization.~~

17 ~~(f)~~ ~~Development carried out under this permit shall be consistent with all local requirements, -Guidelines as set out~~
18 ~~in 15A NCAC 07H .0200, and local land use plans current at the time of authorization.~~

19

20 *History Note: Authority G.S. 113A-107; 113A-118.1;*
21 *Temporary Adoption Eff. June 15, 2004;*
22 *Eff. April 1, 2005;*
23 *Temporary Amendment Eff. April 1, 2019;*
24 *Amended Eff. July 1, 2019;*
25 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2705 is readopted **with changes** as published in 34:09 NCR 761 as follows:

2
3 **15A NCAC 07H .2705 SPECIFIC CONDITIONS**

4 (a) A ~~general permit~~ **General Permit** issued pursuant to this Section shall be applicable only for the construction of
5 marsh sill structures built in conjunction with existing, created, or restored wetlands. Planted wetland vegetation shall
6 consist only of native ~~species.~~ **per G.Ss 113A-113(b)(1).**

7 (b) The landward edge of the sill shall be positioned no greater than 30 feet waterward of the normal high water or
8 normal water level or five feet waterward of the existing wetlands, whichever distance is greater.

9 (c) The permittee shall maintain the authorized sill, including wetlands and tidal inundation, in conformance with the
10 terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification of
11 noncompliance from the Division of Coastal Management.

12 (d) The height of sills shall not exceed 12 inches above normal high water, normal water level, or the height of the
13 adjacent wetland substrate, whichever is higher.

14 (e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

15 (f) The sills shall have at least one five-foot opening every 100 feet and may be staggered, ~~overlapped~~ **overlapped**, or
16 left open as long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap
17 more than 10 feet. ~~Deviation from these opening requirements shall be allowable following coordination with the N.C.~~
18 ~~Division of Coastal Management.~~

19 (g) The sill structure shall not exceed a slope of a one and a half foot horizontal distance over a one foot vertical rise.
20 The width of the structure on the bottom shall not exceed 12 feet.

21 (h) For water bodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one
22 sixth (1/6) the width of the ~~waterbody.~~ **waterbody at any point along its alignment.**

23 (i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal
24 agency.

25 (j) The sill shall not interfere with leases or franchises for shellfish culture.

26 (k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent
27 property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent
28 property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more
29 than 25 feet from the normal high or normal water level. The riparian access corridor line is determined by drawing a
30 line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the
31 point where the upland property line meets the water's edge, as **defined illustrated** in 15A NCAC 07H .1205(t).
32 Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including
33 access to navigation channels from piers, or other means of access.

34 (l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above normal high
35 water or normal water level and **must shall** be maintained for the life of the structure.

36 (m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats
37 shall be utilized for the areas to be crossed. The temporary mats shall be removed upon completion of the construction

1 of the sill structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water
2 unless contained in a containment structure supported by construction mats.

3 (n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter
4 adjacent wetlands or waters.

5 (o) No excavation or filling, other than that necessary for the construction and bedding of the sill structure, is
6 authorized by this general permit.

7 (p) Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is
8 present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of
9 April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic
10 ~~vegetation~~ as defined by the N.C. Marine Fisheries Commission.

11 (q) Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a
12 minimum setback of 10 feet from any oysters, oyster beds, or shell banks.

13 (r) No excavation of the shallow water bottom or any wetland is authorized by this general permit.

14 (s) The sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken
15 concrete, or other similar materials that are approved by the N.C. Division of Coastal Management. Sill material shall
16 be free of loose sediment or ~~any pollutant, including~~ exposed rebar. The sill material shall be of sufficient size and
17 slope to prevent its movement from the approved alignment by wave or current action.

18

19 *History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-118.1;*
20 *Temporary Adoption Eff. June 15, 2004;*
21 *Eff. April 1, 2005;*
22 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));*
23 *Temporary Amendment Eff. April 1, 2019;*
24 *Amended Eff. July 1, 2019;*
25 *Readopted Eff. October 1, 2022.*

Burgos, Alexander N

Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700
Attachments: CRC - 07.2022 - 07H Change Requests Responses 9.9.2022.docx

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Friday, September 9, 2022 4:20 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Willis, Angela <angela.willis@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Jennifer - 15A NCAC 07H .2205 was not included in this packet, and I believe it should have been. These rules required a lot of further review. Please see responses. As a reminder, these rules have already been given an extension. Thank you for your work shepherding these through the process.

Mike – if the agency responses are yours, as I assume they are, you may want to seek guidance from Jennifer on the Administrative Procedures Act and the rule-making process. She is very knowledgeable on this and would be a great resource. Many of the responses were non-responsive. Those have been noted. You may want to better engage in this process if you want CRC's rules to remain in the code. Most of these rules are objectionable for reasons given in the change requests, and the responses generally did not address the problems noted.

Please let me know what you would like to do about these rules. Time is nigh.

I will need responses by Tuesday at noon, at the latest.

Thanks,

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1301

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Formatting is incorrect. See 26 NCAC 02C .0108. Please fix.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

The formatting for the rule submission is incorrect. It is to have 1.5 line spacing as specified in the referenced rule above. This response a lack of seriousness as it is obvious that rule was not checked. Also, "Rules previously readopted ... and approved by the RRC in December 2021" is non-responsive and irrelevant. It is not a sufficient response and will draw an objection before the RRC for failure to follow the APA.

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected. This rule has been made consistent with 15A NCAC 7H .1200

In making this correction, the Rule now begins with a duplicate "A". Please remove one of them.

Line 8, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1302

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

*Approval procedures have been made consistent with that of 15A NCAC 7H .1202
Please add an oxford comma after "project area" in (a)(1). It should read "...project area, and his or her name and address; and". The "his or her" is misplaced.*

Paragraph (a), the applicant shall contact the Division where?

The Division has four district offices and applicants contact the office within that district. I didn't ask this for my edification. It was asked because it is unclear. And an answer to this stating "the regulated public knows where to apply" will result in a recommendation of objection.

*Paragraph (a), after Division of Coastal Management, please add (DCM) or ("DCM").
Changed to Division of Coastal Management.*

Paragraph (a), is "development" a defined term? Please define.

*Development is defined in GS 113A-103(5).
Then state that in the rule.*

Paragraph (a), on line 5, it states "The applicant shall provide..." and then Paragraph (b) begins with the same language. Move "information on site location, dimensions of the project area, and his or her name and address" down to (1) of the Subparagraphs, and renumber the others.

Corrected. Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(1), add a comma between "obtained" and "signed". Also, delete "that they have".

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

(a)(2) remains unclear due to the “obtained signed” language. Perhaps make the paragraph a list – “confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, and indicating that they have...”

Subparagraph (a)(2), line 11, delete “instruct”, replace with “state that”, change from “to provide” to “may provide”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), change Division of Coastal Management to DCM.

Changed to Division of Coastal Management.

Subparagraph (a)(2), line 13, delete the comma after “notice” and “and”, and delete “indicate”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), starting “DCM staff shall review...” is objectionable due to problems with clarity and ambiguity. By what criteria are comments relevant? “if the proposed project can be approved by a General Permit” – Is anything approved “by a permit”? Would a project be denied a permit based on comments?

Subparagraph (a)(2), line 17, please change “he must” to “he or she shall”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Corrected.

This is still unclear. No information was given as to where to contact the Division. The second half of the second sentence should elaborate on the parties, such as “and indicate no response [by the adjacent property owners] shall be interpreted as [the adjacent property owners having] no objection [to the proposed development].”

Paragraph (c), line 18, delete or define “appropriate”. Change Division of Coastal Management to DCM. In that same sentence, what does “appropriately” mean? Delete or define criteria.

DCM has been changed to Division of Coastal Management. Appropriately deleted.

Paragraph (c), when the Rule states “Written authorization to proceed”, why not simply say “Permit”. Use active voice. Should read: “The DCM representative may issue a permit for the proposed development during the on-site meeting.”

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

The added language in (c) is unclear as to who must re-examine the proposed development and the applicable permits. “Necessary” is vague if not defined. Consider: “Construction permitted under this Subsection must begin within twelve months of the date of permit issuance or such permit shall expire. If an applicant seeks a new permit under this Subsection due to the lapsing of a previously issued permit under this Subsection, the Division of Coastal Management shall re-examine the proposed development to determine if a new General Permit may be issued.”

Paragraph (c), change “of this visit” to “of permit issuance”. Change “general authorization” to “permit”.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1303

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Spell out which "Department" is intended.

Done.

Should include language stating that fees collected shall not exceed 1/3 of the personnel and administrative costs of the Division of Coastal Management.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1304

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Done.

Paragraph (a) is unnecessary because it is stated in another rule.

This rule specifies that it is for non-commercial purposes.

Paragraph (b) should start "Permitees", no authority over "individuals".

General Conditions have been made consistent with that of 15A NCAC 7H .1204

This is non-responsive and will be recommending objection for being unclear unless fixed.

Paragraph (c), define "unreasonable" or remove from Rule.

Done.

Paragraph (d) is objectionable for clarity/ambiguity. Fix.

General Conditions have been made consistent with that of 15A NCAC 7H .1204

In paragraph (d), add an Oxford comma, line 15, after "conservation". Also, change to present tense for "endangers" and "affects". Furthermore, (d) is vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties. This will be another basis for recommending objection.

Paragraphs (e) and (f) need to be deleted as unnecessary.

General Conditions have been made consistent with that of 15A NCAC 7H .1204

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

This is non-responsive and will be recommending objection for lacking necessity unless fixed.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1305

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Paragraph (a), “normal high water level or normal water level” is used several times in several rules. Some use (NHW) or (NWL) or something like that. Be consistent.

Normal High Water is used in areas subject to lunar tides whereas Normal Water Level is used in areas subject to wind tides. The regulated community is familiar with this terminology. It is defined in 15A NCAC 7H .0106.

This is non-responsive. I did not ask what these terms meant or ask that any definition be added to the rule. Also, I could care less whether the regulated public is familiar with this terminology – that is not an appropriate response. Ever. In this set of rules either use the shorthand NHW or NWL, or use the full language. But use one or the other consistently instead of flopping back and forth.

Paragraph (b), what does “absolutely necessary” or “adequate” mean? Delete or define.

Deleted.

Not done. Take another look.

Paragraph (d), remove parenthesis.

Done.

Not done. Take another look. Remove the parentheticals in (e) while you're at it.

Paragraph (k), delete parenthesis on line 31 and comma immediately afterwards.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1401

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

NON-RESPONSIVE. But thank you for fixing.

Line 8, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Corrected. This rule has been made consistent with 15A NCAC 7H .1200

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1402

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See all comments for .1302: they apply here.

*Corrected. Approval procedures have been made consistent with that of 15A NCAC 7H .1202
Not corrected. See responses to Rule .1302.*

Paragraph (d), what is the process for "prior approval"? How does this work? It should be laid out in a rule.

Deleted "prior".

That did not fix the problem. Lay out process/criteria for approval.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1403

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those comments apply here. Fix it.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1404

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before readoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Done.

Paragraph (a), what does “conforming to the standards of this Rule” mean? It is unnecessary and should be deleted.

Deleted.

Paragraphs (e) and (f) need to be deleted as unnecessary.

This rule has been made consistent with 15A NCAC 7H .1204.

No change in paragraph (b) to “permites” rather than “individuals”. The language, as is, confers greater right on the Division than statutorily given. Add an Oxford comma in line 16 after “conservation. In paragraph (d), change to present tense for “endangers” and “affects”. (d) is vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties. Paragraphs (e) and (f) are still unnecessary and should be deleted.

Fix or the recommendation will be objection.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1405

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (c), line 8, delete "(s)".

Done.

Paragraph (e), what is a "pollutant"? Is it defined somewhere? Define.

Deleted.

Paragraph (f), objectionable for clarity/ambiguity. Fix.

This is a site specific criteria to prevent interference in navigation and to prevent shoaling in of docking facilities.

This is non-responsive. (f) remains the original (objectionable) language. What is being conveyed in (f)? The "site specific" response does not clarify where this is applicable.

In (h), insert an Oxford comma.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1501

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Add a comma after "public trust waters".

"This general permit is also subject to the procedures outline in Subchapter 07J .1100." is unnecessary. Delete.

Deleted.

History Note: Authority, 113-229(cl) is not a statute. Do you mean 229(c1)?

Corrected.

Insert an Oxford comma in line 9. Also, the independent clause "shall apply for a General Permit according to the rules of this Section" is improperly separated from the sentence. Either (1) add a comma after "AECs" to create a dependent clause and not break up the "shall" clause from the other necessary portion of the sentence; or (2) eliminate the comma after "activities" which may create confusion with the length of the sentence.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1502

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See all comments for .1302: they apply here.

This rule has been made consistent with 15A NCAC 7H .1202.

Not corrected. See responses to Rule .1302.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1503

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Same comments apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1504

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1304.

This rule has been made consistent with 15A NCAC 7H 1204.

Paragraph (d), under what authority can CRC have this in a Rule. If MF already has it, is it necessary? Delete.

The CRC may allow a new basin if it causes the shellfish closure but chooses not to allow it.

Paragraphs (e) and (f) need to be deleted as unnecessary.

This rule has been made consistent with 15A NCAC 7H 1204.

History Note: Authority, 113-229(c) is not a statute. Do you mean 229(c1)?

Corrected.

No change in paragraph (a) to “permites” rather than “individuals”. The language, as is, confers greater right on the Division than statutorily given. In paragraph (b), change to present tense for “endangers” and “affects”. (b) is still vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties. Add an Oxford comma in line 14.

The issue of authority under (d) was not resolved, as the agency did not state where such authority is derived. The most appropriate cited authority rests in §113-229(c1), which states CRC has authority over estuarine waters and “may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued...” The statute seems to suggest permits at least have to be considered and a flat out ban for shellfish is beyond their consideration. Consider G.S. 113A-107 and 108 as authority, since the authority to issue guidelines are broad and would likely cover this.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Paragraphs (e) and (f) are still unnecessary.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1505

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

The opening paragraph states “maintenance excavation” but Items (1), (2), and (3) are about “New basins”. This does not make sense and is objectionable. Fix.

This General Permit covers excavation to connecting waters, channels, new basins, ditches and maintenance excavation. There are specific conditions for new basins.

Item (1), define “highground”. How is “existing” determined?

Highground is common terminology understood in the coastal area by the regulated community and is generally land above normal high water or normal water level.

Item (2), use “feet”, not “ ’ ”.

Done.

Item (6), add a comma after “marsh”.

Done.

Not done.

Item (7), delete parenthesis.

Done.

Item (8), add a comma after “basin”.

Done.

Item (9) is objectionable for clarity/ambiguity. Fix.

Done.

Not done. Add “for” after the added “public” to clarify the sentence. Otherwise, how would a proposed excavation allow a use? Furthermore, how are items (3) and (9) compatible?

Item (10), delete “(whichever is applicable)”.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Done.

Item (14) what does “structurally tight” mean? Remove the phrase.

Item (13), what is the authority for this? What is the criteria on which suitable materials are measured?

Clarified.

Item (15), what is the authority for this?

The size of development projects undertaken with General Permits is authorized under G.S. 113A-118.1.

Authority to promulgate rules prohibiting shoreline lengths above 500 feet is not conferred on the agency. The statute states, in relevant part, “The Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider: (1) The size of the development...” G.S. 113A-107 and 108 may be a more appropriate cite for authority.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1601

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Lines 9-10, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language. Also, "according rules in this Section" is unnecessary. Delete.

This rule has been made consistent with 15A NCAC 7H .1201

Insert an Oxford comma in line 10.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)? Also, put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1602

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302.

This rule has been made consistent with 15A NCAC 7H .1202.

Not corrected. See responses to Rule .1302.

History Note: Authority, 113A-229(cl) is not a statute. Do you mean 113-229(c1)?

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1603

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Done.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1604

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

This Rule was obviously not reviewed before submission. Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before re-adoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

This rule has been made consistent with 15A NCAC 7H .1200.

Paragraph (a), is "or" meant? Or should it be "are"? Delete "for any purpose".

Done.

Paragraph (b), first sentence, is unclear. Fix.

Done.

does this only apply to this Subsection? It needs to be stated.

Paragraph (e), what is the authority for this?

The permit application form contains a permission to enter on land. This form is authorized by G.Ss.113A-119.

Paragraph (f), delete "= ". This whole paragraph is objectionable.

This language was approved by the RRC for 15A NCAC 7H .1200 in December 2021 as part of re-adoption process.

Paragraphs (g) and (h) are unnecessary. Delete.

This language was approved by the RRC for 15A NCAC 7H .1200 in December 2021 as part of re-adoption process.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Add an Oxford comma in line 21.

In (f), change to present tense for “endangers” and “affects”.

(f) is also vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties.

Paragraphs (g) and (h) are still unnecessary.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1605

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Capitalize “general permit” in line 5.

Item (2), add a comma after “marsh”.

Done.

Item (3), reword for clarity: “must be sand or rock, clean and free of organic matter.”

Clarified.

The modification to (3) made the sentence illegible. The sentence now reads, “any additional backfill material required shall sand or rock and not contain organic matter.” Add “consist of” back into the sentence.

Item (4) means what? Unclear.

Deleted.

Item (8), what does “in other areas” mean? Also, change “they will” to “subaqueous line must”.

Clarified.

Item (9), change “electricity will” to “electricity must”. Also, us “feet” instead of “’”.

Done.

Item (10), where are these clearances found? Put it in the rule. Incorporate by reference.

The clearance is usually found on the bridge.

No, where in U.S. rules, code, statutes, whatever. Where are these established?

Item (11), delete “Additionally:”.

Done.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1805

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*History Note: Authority, for 113-229(c1), put the statutes in numerical order.
This rule was approved by the RRC at the August 2022 meeting.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2001

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Done.

See comments for .1301. Those apply here.

Lines 9-10, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Done.

Capitalize "general permit" in line 10.

How is the standard for "shorelines that feature characteristics of the Estuarian Shoreline AEC" enforceable? Who makes the determination? When is the determination made – before or after the application?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2002

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Not corrected. See responses to Rule .1302.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2003

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*See comments for .1303. Those apply here.
Corrected.*

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2004

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraph (a), this is unnecessary.

Deleted.

Paragraph (c), what does "unreasonable" mean? Define or delete.

Deleted.

Paragraphs (e) and (f) are unnecessary. Delete.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Did not change "individuals" to "permittees".

In (a), remove "periodic".

In line 7, capitalize "general permit".

In (a), this application form is authorized by G.S. 113A-119, but only authorizes inspection "(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected..."

What is being required by (c)? What is the authority to circumvent 113A-118.1(b) if this is a general permit?

Change all semi-colons to commas in (c).

Paragraphs (d) and (e) are still unnecessary.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2005

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), use a different wording that does not use “nor”.

Changed.

Paragraph (b), delete parenthesis, “(s)”.

Done.

Remove the added comma in line 5.

Remove the commas in lines 8 and 9, as they create an unnecessary dependent clause.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2101

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Done.

Lines 9-10, "according to the authority provided in 15A NCAC 07J .1100", rules do not provide authority. Change the language. Also, delete "and according to the procedures and conditions outline in this subchapter" as it is unnecessary.

Deleted.

Remove the added comma in line 9

Change "public trust areas and estuarine waters" to "Estuarine and Public Trust Waters".

How is the standard for "shorelines that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2102

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here. Fix.

Corrected.

Not corrected. See responses to Rule .1302.

In (c), what is the authority to require an "on-site" meeting? What is the extent of this "review"?

In (d), remove "prior" to avoid ambiguity on when approval must be made.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2103

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here.

Department spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2104

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraph (a), this is unnecessary.

Deleted.

Paragraphs (e) and (f) are unnecessary. Delete.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

(a) was deleted. Renumber each paragraph.

In (b), the agency stated the authority to enter upon land is derived from the application form, presumably consented to by the applicant. This application form is authorized by G.S. 113A-119, but only authorizes inspection "(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected..."

What is being required by (d)? What is the authority to circumvent 113A-118.1(b) if this is a general permit?

(e) and (f) are still unnecessary.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2105

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (c), how is it determined that insufficient wetland habitat exists? Based on what criteria? This is objectionable.

Deleted.

Paragraph (m), what does "in good condition" mean? With what authority does CRC impose the ongoing duty in this Paragraph?

Deleted "in good condition". Authority is 113A-118.1.

In (a), add a comma after the (etc.) parenthetical.

In (a), is the one sixth determination made where the sill is located?

In (c), capitalize "general permit".

As in .1504, there is an authority issue. Consider G.S. 113A-107 and 108 as authority, since the authority to issue guidelines are broad and would likely cover this.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2201

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule. Comments for .1301 apply here. Fix.

Done.

Lines 9-10, delete "according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section", as it is unnecessary.

Deleted reference to 07J .1100. The Division believes the remainder is relevant and necessary.

Change "public trust areas and estuarine waters" to "Estuarine and Public Trust Waters".

Consider "moorings or bird nesting poles" if you want the rule to cover each individually.

Capitalize "general permit" in line 10.

How is the standard for "shorelines that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2202

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Not corrected. See responses to Rule .1302.

Also, delete parenthesis in Subparagraph (b)(2).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2203

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2204

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*Paragraph (d), what is “unreasonable interference”? Define or delete.
Corrected.*

Paragraph (e) is objectionable as unclear/ambiguous. What is the “quality of the human environment? What does it mean to “endanger” adjoining properties? The last sentence of the Paragraph is unnecessary. Delete.

Corrected to be consistent with 15A NCAC 07H .1204(d), which was approved by the RRC and readopted effective December 1, 2021.

Delete Paragraph (f) as it is unnecessary.

Corrected to be consistent with 15A NCAC 07H .1204(f), which was approved by the RRC and readopted effective December 1, 2021.

What is CRC’s authority for Paragraph (g).

Consistent with 15A NCAC 07H .1204(b), which was approved by the RRC and readopted effective December 1, 2021.

Remove the comma from (c).

(d) was changed, but “interfere” is still undefined or explained, but is modified by “with navigation” so it is likely sufficient.

In (e), capitalize “general permit”.

Add an Oxford comma in line 18.

(e) is vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties.

No change in paragraph (b) to “permitees” rather than “individuals”.

However, in (b), as is at issue in .1604, the agency may have exceeded their authority. In .1604, the agency stated the authority to enter upon land is derived from the application form, presumably consented to by the applicant. This application form is authorized by G.S. 113A-119, but only authorizes inspection “(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected...”

Add an Oxford comma in line 15.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2205

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), delete comma after “mean high water line” and delete “whichever is applicable”.

Done.

Paragraph (b), where are these guidelines found? Incorporate by reference?

Deleted.

First word on line 12 is not a word.

Corrected.

What is DCM or CRC’s authority for Paragraph (f)?

113A-118.1

Delete parenthesis in Paragraphs (i), (k), (l), and (m).

Done.

Add comma after “vessel State registration number” on line 7, page 2.

Done.

Use “three feet by three feet” in Paragraph (o).

Done.

NOT IN THE ATTACHMENTS TO FORWARDED EMAIL.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2301

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected.

Is this a rule? It is objectionable because it does not fit within the definition of a rule. G.S. 150B-2 (8a).

Corrected.

A zero is needed in the rule number on line 9.

Deleted.

A comma is needed after "public trust areas" on line 11.

Deleted.

Capitalize "general permit".

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2302

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See .1302 comments. Those apply here.

Corrected.

Not corrected. See responses to Rule .1302.

Add comma after "address" on line 5. Delete parenthesis on line 6.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2303

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

See comments for .1303. Those apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Add comma after "check" on line 5.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2304

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Paragraph (c) is objectionable for clarity/ambiguity. Fix or delete.

Corrected.

Delete Paragraphs (e) and (f). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Paragraph (g), what are "work channels"? Define or delete.

Deleted.

Paragraphs (e) and (f) are still unnecessary.

The ambiguity in (c) was not resolved. This rule is not generally applicable and has not definiteness.

What is (j) regulating? When would a bridge or culvert not serve its intended purpose? Would language such as "bridges or culverts which are currently operable" be more appropriate?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2305

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Paragraph (b) is objectionable. How is it determined that two lanes are warranted? Criteria? By what criteria is "significantly affect[ed]" or "unnecessarily endangers" measured?

Corrected.

Not corrected. The determination of "significant adverse environmental impact" was not explained or reference made to such criteria.

Delete parenthesis in Paragraph (d). Be consistent throughout this rule set when using NWL or NHW.

Parenthesis deleted. NWL and NHW are not synonymous. See definitions in 15A 7H .0106. See request for consistency in response to Rule .1305.

Delete parenthesis in Subparagraphs (g)(5), (7), and (8).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2401

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Changed.

Line 8, "according to the authority provided in ...", rules do not provide authority. Change the language. Also, delete "and according to the rules of this Section" as unnecessary.

Deleted.

Capitalize "general permit".

How is the standard for "shorelines that feature characteristics of the Estuarian Shoreline AEC" enforceable? Who makes the determination? When is the determination made – before or after the application?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2402

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Not corrected. Exact same issues as .1302.

In (d), remove "prior" to avoid ambiguity on when approval must be made.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2403

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

See comments for .1303. Those apply here. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2404

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Why are semicolons used in Paragraph (d)? Fix.

Fixed.

Delete Paragraphs (e) and (f). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

No change in paragraph (b) to "permitees" rather than "individuals".

However, in (b), as is at issue in .1604, the agency may have exceeded their authority. In .1604, the agency stated the authority to enter upon land is derived from the application form, presumably consented to by the applicant. This application form is authorized by G.S. 113A-119, but only authorizes inspection "(b) Upon receipt of any application... the Secretary shall issue public notice of the proposed development... by posting or causing to be posted a notice at the location of the proposed development stating... where the application or modification may be inspected..."

(e) and (f) are still unnecessary.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2405

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Paragraph (a) specifies the physical features that must be present on a shoreline for this permit to be applicable.

*How is Paragraph (g) determined? By what criteria? This is objectionable. Fix.
Deleted.*

*Delete parenthesis in Paragraph (l).
Done.*

Capitalize "general permit".

In (g), as in .1505, G.S. 113A-107 and 108 may confer authority to limit projects without permitting. Consider adding 108 as authority.

What does it mean to "maintaining the structure in good condition" in (l)?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2601

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected.

Capitalize "general permit".

What is the definition of or reference to "aquatic resource functions and services"?

How is the standard for "shorelines... that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2602

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

Corrected.

Not corrected. Exact same issues as .1302.

In (d), remove "prior" to avoid ambiguity on when approval must be made.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2603

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Same comments apply. Fix.
Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2604

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraphs (f) and (g). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Same issues as .2404.

In (c), what does "interference with navigation or use of water by the public" mean? The term "interference" should be elaborated on.

(d) is also vague as to what the determination of endangering adjoining properties or significantly affecting the listed sites encompasses and the bases for such determination. Chapter 113A discusses historic areas, etc., but not endangering adjoining properties.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2605

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Delete "(s)" in Paragraph (c).

Done.

Paragraph (e), by what criteria is this determined? This should be put in rule, whether in this one or in its own. This is objectionable.

Deleted.

Add a comma after "deed restriction" on line 19.

Done.

Add a comma after "measures" on line 25, and add "as" after "such" on this line.

Done.

One line 26, "etc." is unclear. Do not use.

Deleted.

Add a comma after "watercourses" on line 27.

Done.

Capitalize "general permit".

Ensure only two spaces are between the paragraph numbering and text.

In (f), how are "coastal resource functions and values" calculated? What is the determination based on?

In (l), what are "pollutants" defined as? What is the basis for claiming an amount is "trace" or not?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2701

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule. Objectionable.

Done.

"as set out in ... and according to the rules in this Section" should be deleted as unnecessary. Deleted reference to 07J .1100. The Division believes the remainder is relevant and necessary.

Capitalize "general permit".

How is the standard for "shorelines... that feature characteristics of the Estuarian Shorelines" enforceable? Who makes the determination? When is the determination made – before or after the application?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2702

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

This whole rule is objectionable for lack of clarity. See comments for .1302.

Made consistent with 15A NCAC 07H .1202, which was readopted and approved by the RRC effective December 1, 2021.

Combine "The applicant shall provide...", line 5, into the subparagraphs.

Done.

Subparagraph (b)(1) and (2), "confirmation"???. Just confirmation? Or a copy of?

Addressed by requiring evidence.

Paragraph (c), "based on their relevance to the potential impacts of the proposed project"???

How is approval determined? Factors?

Addressed.

Paragraph (d), "written authorization to proceed" or "general authorization" or "authorization"???. Is this a permit? Or is it something different?

Changed to "permit".

Line 21, "shall be necessary to re-examine". Use active voice. Who submits request to whom for permit to be reissued?

Changed.

How must an applicant or adjacent property owner contact the Division and how must the applicant request approval? Is there a method?

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

What is the authority to require an “on-site” meeting? What is the extent of this “review”?

The language in (c) is unclear as to who must re-examine the proposed development and the applicable permits. “Necessary” is vague if not defined. Consider: “Construction permitted under this Subsection shall be completed within 120 days of the date of permit issuance or such permit shall expire. If an applicant seeks a new permit under this Subsection due to the lapsing of a previously issued permit under this Subsection, the Division of Coastal Management shall re-examine the proposed development to determine if a new General Permit may be issued.”

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2703

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2704

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a) repeats .2701. Delete.
Deleted.

Use active voice.

Paragraph (b), what is the specific authority for “periodic inspections”?
Consistent with 15A NCAC 07H .1204(b), which was readopted and approved by the RRC effective December 1, 2021.

What does Paragraph (c) mean? Unclear.
Placement of marsh sills cannot prevent navigation of public waters.

What does everything on lines 12 and 13 mean? “Unresolved questions”?
Unanswered or open questions about the potential impacts of a proposed project.

Delete Paragraphs (e) and (f) as unnecessary.
Consistent with 15A NCAC 07H .1204(e) and (f), which were readopted and approved by the RRC effective December 1, 2021.

Same issues as .2404 with the right to inspect going beyond authority and (d) and (e) being unnecessary.

In (b), what does “interfere” mean in this context?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2705

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), the permit is for development. What is the authority for regulating vegetation?
113A-113(b)(1). Citation added.

Paragraph (f), "Deviation from these opening requirements shall be allowable following coordination with the N.C. Division of Coastal Management" is waiver. See G.S. 150B-19(6). This is objectionable for lack of clarity when waiver is allowed like this.
Waiver removed.

Paragraph (k), line 31, "as defined in 15A NCAC..." It is not. This is objectionable for lack of clarity.
Replaced "defined" with "illustrated".

Paragraph (l), change "must" to "shall" on line 35.
Changed.

Paragraph (s), again with the "other similar materials that are approved by the NC Division of Coastal Management." This is unclear. Also, what is "pollutant"? Define or delete?
All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC effective December 2021. Also see similar language in 15A NCAC 7H .1105(d) that was approved by the RRC and readopted effective April 1, 2022. "Pollutant" removed.

Capitalize "general permit".

In (a), are "native species" those outlined in G.S. 113-229(n)(3) and made reference to in G.S. 113A-113(b)(1), which was used as authority?

Add an Oxford comma in line 15.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

How is the width calculated in (h)? From the area of construction to the other side of the waterbody?

In (j), what does it mean to “interfere” with leases or franchises of shellfish culture?

Can reference be made to a definition of “submerged aquatic vegetation”?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022 [Responses: Sept. 9, 2022]

Burgos, Alexander N

Subject: FW: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700
Attachments: 15A NCAC 07H .1301 with tech changes.docx; 15A NCAC 07H .1302 with tech changes.docx; 15A NCAC 07H .1303 with tech changes.docx; 15A NCAC 07H .1304 with tech changes.docx; 15A NCAC 07H .1305 with tech changes.docx; 15A NCAC 07H .1401 with tech changes.docx; 15A NCAC 07H .1402 with tech changes.docx; 15A NCAC 07H .1403 with tech changes.docx; 15A NCAC 07H .1404 with tech changes.docx; 15A NCAC 07H .1405 with tech changes.docx; 15A NCAC 07H .1501 with tech changes.docx; 15A NCAC 07H .1502 with tech changes.docx; 15A NCAC 07H .1503 with tech changes.docx; 15A NCAC 07H .1504 with tech changes.docx; 15A NCAC 07H .1505 with tech changes.docx; 15A NCAC 07H .1601 with tech changes.docx; 15A NCAC 07H .1602 with tech changes.docx; 15A NCAC 07H .1603 with tech changes.docx; 15A NCAC 07H .1604 with tech changes.docx; 15A NCAC 07H .1605 with tech changes.docx; 15A NCAC 07H .2001 with tech changes.docx; 15A NCAC 07H .2002 with tech changes.docx; 15A NCAC 07H .2003 with tech changes.docx; 15A NCAC 07H .2004 with tech changes.docx; 15A NCAC 07H .2005 with tech changes.docx; 15A NCAC 07H .2101 with tech changes.docx; 15A NCAC 07H .2102 with tech changes.docx; 15A NCAC 07H .2103 with tech changes.docx; 15A NCAC 07H .2104 with changes.docx; 15A NCAC 07H .2105 with tech changes.docx; 15A NCAC 07H .2201 with tech changes.docx; 15A NCAC 07H .2202 with tech changes.docx; 15A NCAC 07H .2203 with tech changes.docx; 15A NCAC 07H .2204 with tech changes.docx; 15A NCAC 07H .2301 with tech changes.docx; 15A NCAC 07H .2302 with tech changes.docx; 15A NCAC 07H .2303 with tech changes.docx; 15A NCAC 07H .2304 with tech changes.docx; 15A NCAC 07H .2305 with tech changes.docx; 15A NCAC 07H .2401 with tech chcnages.docx; 15A NCAC 07H .2402 with tech changes.docx; 15A NCAC 07H .2403 with tech changes.docx; 15A NCAC 07H .2404 with tech changes.docx; 15A NCAC 07H .2405 with tech changes.docx; 15A NCAC 07H .2601 with tech changes.docx; 15A NCAC 07H .2602 with tech changes.docx; 15A NCAC 07H .2603 with tech changes.docx; 15A NCAC 07H .2604 with tech changes.docx; 15A NCAC 07H .2605 with tech changes.docx; 15A NCAC 07H .2701 with tech changes.docx; 15A NCAC 07H .2702 with tech changes.docx; 15A NCAC 07H .2703 with tech changes.docx; 15A NCAC 07H .2704 with tech changes.docx; 15A NCAC 07H .2705 with tech changes.docx; CRC - 07.2022 - 07H Change Requests Aug 31 2022.docx

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

Sent: Thursday, September 1, 2022 4:31 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

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

Subject: CRC 07H .1300, .1400, .1500, .1600, .2000, .2100, .2200, .2300.....2700

Lawrence,

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

15A NCAC 07H .1301, .1302, .1303, .1304, .1305, .1401, .1402, .1403, .1404, .1405, .1501, .1502, .1503, .1504, .1505, .1601, .1602, .1603, .1604, .1605, .2001, .2002, .2003, .2004, .2005, .2101, .2102, .2103, .2104, .2105, .2201, .2202, .2203, .2204, .2205, .2301, .2302, .2303, .2304, .2305, .2401, .2402, .2403, .2404, .2405, .2601, .2602, .2603, .2604, .2605, .2701, .2702, .2703, .2704, .2705

Jennifer

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

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1301

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Formatting is incorrect. See 26 NCAC 02C .0108. Please fix.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected. This rule has been made consistent with 15A NCAC 7H .1200

Line 8, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1302

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Paragraph (a), the applicant shall contact the Division where?

The Division has four district offices and applicants contact the office within that district.

Paragraph (a), after Division of Coastal Management, please add (DCM) or ("DCM").

Changed to Division of Coastal Management.

Paragraph (a), is "development" a defined term? Please define.

Development is defined in GS 113A-103(5).

Paragraph (a), on line 5, it states "The applicant shall provide..." and then Paragraph (b) begins with the same language. Move "information on site location, dimensions of the project area, and his or her name and address" down to (1) of the Subparagraphs, and renumber the others.

Corrected. Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(1), add a comma between "obtained" and "signed". Also, delete "that they have".

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), line 11, delete "instruct", replace with "state that", change from "to provide" to "may provide".

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), change Division of Coastal Management to DCM.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

Changed to Division of Coastal Management.

Subparagraph (a)(2), line 13, delete the comma after “notice” and “and”, and delete “indicate”. Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Subparagraph (a)(2), starting “DCM staff shall review...” is objectionable due to problems with clarity and ambiguity. By what criteria are comments relevant? “if the proposed project can be approved by a General Permit” – Is anything approved “by a permit”? Would a project be denied a permit based on comments?

Subparagraph (a)(2), line 17, please change “he must” to “he or she shall”.

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Corrected.

Paragraph (c), line 18, delete or define “appropriate”. Change Division of Coastal Management to DCM. In that same sentence, what does “appropriately” mean? Delete or define criteria.

DCM has been changed to Division of Coastal Management. Appropriately deleted.

Paragraph (c), when the Rule states “Written authorization to proceed”, why not simply say “Permit”. Use active voice. Should read: “The DCM representative may issue a permit for the proposed development during the on-site meeting.”

Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Paragraph (c), change “of this visit” to “of permit issuance”. Change “general authorization” to “permit”.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1303

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Spell out which "Department" is intended.

Done.

Should include language stating that fees collected shall not exceed 1/3 of the personnel and administrative costs of the Division of Coastal Management.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1304

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Done.

Paragraph (a) is unnecessary because it is stated in another rule.

This rule specifies that it is for non-commercial purposes.

Paragraph (b) should start "Permitees", no authority over "individuals".

General Conditions have been made consistent with that of 15A NCAC 7H .1204

Paragraph (c), define "unreasonable" or remove from Rule.

Done.

Paragraph (d) is objectionable for clarity/ambiguity. Fix.

General Conditions have been made consistent with that of 15A NCAC 7H .1204

Paragraphs (e) and (f) need to be deleted as unnecessary.

General Conditions have been made consistent with that of 15A NCAC 7H .1204

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1305

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Paragraph (a), "normal high water level or normal water level" is used several times in several rules. Some use (NHW) or (NWL) or something like that. Be consistent.

Normal High Water is used in areas subject to lunar tides whereas Normal Water Level is used in areas subject to wind tides. The regulated community is familiar with this terminology. It is defined in 15A NCAC 7H .0106.

*Paragraph (b), what does "absolutely necessary" or "adequate" mean? Delete or define.
Deleted.*

*Paragraph (d), remove parenthesis.
Done.*

*Paragraph (k), delete parenthesis on line 31 and comma immediately afterwards.
Done.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1401

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Line 8, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Corrected. This rule has been made consistent with 15A NCAC 7H .1200

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1402

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See all comments for .1302: they apply here.

Corrected. Approval procedures have been made consistent with that of 15A NCAC 7H .1202

Paragraph (d), what is the process for "prior approval"? How does this work? It should be laid out in a rule.

Deleted "prior".

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1403

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

See comments for .1303. Those comments apply here. Fix it.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1404

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Done.

Paragraph (a), what does "conforming to the standards of this Rule" mean? It is unnecessary and should be deleted.

Deleted.

Paragraphs (e) and (f) need to be deleted as unnecessary.

This rule has been made consistent with 15A NCAC 7H .1204.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1405

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Paragraph (c), line 8, delete "(s)".

Done.

Paragraph (e), what is a "pollutant"? Is it defined somewhere? Define.

Deleted.

Paragraph (f), objectionable for clarity/ambiguity. Fix.

This is a site specific criteria to prevent interference in navigation and to prevent shoaling in of docking facilities.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1501

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Add a comma after "public trust waters".

"This general permit is also subject to the procedures outline in Subchapter 07J .1100." is unnecessary. Delete.

Deleted.

History Note: Authority, 113-229(cl) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1502

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See all comments for .1302: they apply here.

This rule has been made consistent with 15A NCAC 7H .1202.

*History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?
Corrected.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1503

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

See comments for .1303. Same comments apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1504

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

See comments for .1304.

This rule has been made consistent with 15A NCAC 7H 1204.

Paragraph (d), under what authority can CRC have this in a Rule. If MF already has it, is it necessary? Delete.

The CRC may allow a new basin if it causes the shellfish closure but chooses not to allow it.

Paragraphs (e) and (f) need to be deleted as unnecessary.

This rule has been made consistent with 15A NCAC 7H 1204.

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1505

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

The opening paragraph states “maintenance excavation” but Items (1), (2), and (3) are about “New basins”. This does not make sense and is objectionable. Fix.

This General Permit covers excavation to connecting waters, channels, new basins, ditches and maintenance excavation. There are specific conditions for new basins.

Item (1), define “highground”. How is “existing” determined?

Highground is common terminology understood in the coastal area by the regulated community and is generally land above normal high water or normal water level.

Item (2), use “feet”, not “ ’ ”.

Done.

Item (6), add a comma after “marsh”.

Done.

Item (7), delete parenthesis.

Done.

Item (8), add a comma after “basin”.

Done.

Item (9) is objectionable for clarity/ambiguity. Fix.

Done.

Item (10), delete “(whichever is applicable)”.

Done.

Item (13), what is the authority for this? What is the criteria on which suitable materials are measured?

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

Clarified.

Item (15), what is the authority for this?

The size of development projects undertaken with General Permits is authorized under G.S. 113A-118.1.

History Note: Authority, 113-229(cl) is not a statute. Do you mean 229(c1)?

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1601

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC in December 2021.

Lines 9-10, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language. Also, "according rules in this Section" is unnecessary. Delete.

This rule has been made consistent with 15A NCAC 7H .1201

History Note: Authority, 113-229(c1) is not a statute. Do you mean 229(c1)? Also, put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1602

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302.

This rule has been made consistent with 15A NCAC 7H .1202.

*History Note: Authority, 113A-229(cl) is not a statute. Do you mean 113-229(c1)?
Done.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1603

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Done.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1604

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

This Rule was obviously not reviewed before submission. Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before re-adoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

This rule has been made consistent with 15A NCAC 7H .1200.

Paragraph (a), is "or" meant? Or should it be "are"? Delete "for any purpose".
Done.

Paragraph (b), first sentence, is unclear. Fix.
Done.

Paragraph (e), what is the authority for this?
The permit application form contains a permission to enter on land. This form is authorized by G.Ss.113A-119.

Paragraph (f), delete "= ". This whole paragraph is objectionable.
This language was approved by the RRC for 15A NCAC 7H .1200 in December 2021 as part of re-adoption process.

Paragraphs (g) and (h) are unnecessary. Delete.
This language was approved by the RRC for 15A NCAC 7H .1200 in December 2021 as part of re-adoption process.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.
Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1605

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Item (2), add a comma after "marsh".

Done.

Item (3), reword for clarity: "must be sand or rock, clean and free of organic matter."

Clarified.

Item (4) means what? Unclear.

Deleted.

Item (8), what does "in other areas" mean? Also, change "they will" to "subaqueous line must".

Clarified.

Item (9), change "electricity will" to "electricity must". Also, us "feet" instead of " '".

Done.

Item (10), where are these clearances found? Put it in the rule. Incorporate by reference.

The clearance is usually found on the bridge.

Item (11), delete "Additionally:."

Done.

History Note: Authority, for 113-229(c1), put the statutes in numerical order.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1805

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*History Note: Authority, for 113-229(c1), put the statutes in numerical order.
This rule was approved by the RRC at the August 2022 meeting.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2001

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Done.

See comments for .1301. Those apply here.

Lines 9-10, "according to the authority provided in Subchapter...", rules do not provide authority. Change the language.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2002

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2003

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*See comments for .1303. Those apply here.
Corrected.*

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2004

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraph (a), this is unnecessary.

Deleted.

Paragraph (c), what does "unreasonable" mean? Define or delete.

Deleted.

Paragraphs (e) and (f) are unnecessary. Delete.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2005

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), use a different wording that does not use "nor".

Changed.

Paragraph (b), delete parenthesis, "(s)".

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2101

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Done.

Lines 9-10, "according to the authority provided in 15A NCAC 07J .1100", rules do not provide authority. Change the language. Also, delete "and according to the procedures and conditions outline in this subchapter" as it is unnecessary.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2102

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here. Fix. Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2103

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here.

Department spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2104

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before readoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraph (a), this is unnecessary.

Deleted.

Paragraphs (e) and (f) are unnecessary. Delete.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2105

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (c), how is it determined that insufficient wetland habitat exists? Based on what criteria? This is objectionable.

Deleted.

Paragraph (m), what does "in good condition" mean? With what authority does CRC impose the ongoing duty in this Paragraph?

Deleted "in good condition". Authority is 113A-118.1.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2201

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule. Comments for .1301 apply here. Fix.

Done.

Lines 9-10, delete "according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section", as it is unnecessary.

Deleted reference to 07J .1100. The Division believes the remainder is relevant and necessary.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2202

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Also, delete parenthesis in Subparagraph (b)(2).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2203

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2204

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

*Paragraph (d), what is “unreasonable interference”? Define or delete.
Corrected.*

Paragraph (e) is objectionable as unclear/ambiguous. What is the “quality of the human environment? What does it mean to “endanger” adjoining properties? The last sentence of the Paragraph is unnecessary. Delete.

Corrected to be consistent with 15A NCAC 07H .1204(d), which was approved by the RRC and readopted effective December 1, 2021.

Delete Paragraph (f) as it is unnecessary.

Corrected to be consistent with 15A NCAC 07H .1204(f), which was approved by the RRC and readopted effective December 1, 2021.

What is CRC’s authority for Paragraph (g).

Consistent with 15A NCAC 07H .1204(b), which was approved by the RRC and readopted effective December 1, 2021.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2205

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), delete comma after “mean high water line” and delete “whichever is applicable”.

Done.

Paragraph (b), where are these guidelines found? Incorporate by reference?

Deleted.

First word on line 12 is not a word.

Corrected.

What is DCM or CRC’s authority for Paragraph (f)?

113A-118.1

Delete parenthesis in Paragraphs (i), (k), (l), and (m).

Done.

Add comma after “vessel State registration number” on line 7, page 2.

Done.

Use “three feet by three feet” in Paragraph (o).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2301

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected.

Is this a rule? It is objectionable because it does not fit within the definition of a rule. G.S. 150B-2 (8a).

Corrected.

A zero is needed in the rule number on line 9.

Deleted.

A comma is needed after "public trust areas" on line 11.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2302

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See .1302 comments. Those apply here.

Corrected.

Add comma after "address" on line 5. Delete parenthesis on line 6.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2303

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

See comments for .1303. Those apply here.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Add comma after "check" on line 5.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2304

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Paragraph (e) is objectionable for clarity/ambiguity. Fix or delete.

Corrected.

Delete Paragraphs (e) and (f). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Paragraph (g), what are "work channels"? Define or delete.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2305

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before reoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Paragraph (b) is objectionable. How is it determined that two lanes are warranted? Criteria? By what criteria is "significantly affect[ed]" or "unnecessarily endangers" measured?

Corrected.

Delete parenthesis in Paragraph (d). Be consistent throughout this rule set when using NWL or NHW.

Parenthesis deleted. NWL and NHW are not synonymous. See definitions in 15A 7H .0106.

Delete parenthesis in Subparagraphs (g)(5), (7), and (8).

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2401

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Changed.

Line 8, "according to the authority provided in ...", rules do not provide authority. Change the language. Also, delete "and according to the rules of this Section" as unnecessary.

Deleted.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2402

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout. See comments for .1302. Those apply here.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2403

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2404

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has “Department of Environment and Natural Resources” may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the “Department” or the “Division” looked at the Rule before readoption. It is not RRC Counsel’s job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Why are semicolons used in Paragraph (d)? Fix.

Fixed.

Delete Paragraphs (e) and (f). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2405

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Paragraph (a) specifies the physical features that must be present on a shoreline for this permit to be applicable.

*How is Paragraph (g) determined? By what criteria? This is objectionable. Fix.
Deleted.*

*Delete parenthesis in Paragraph (l).
Done.*

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2601

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2602

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

Corrected.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2603

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Same comments apply. Fix.
Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2604

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each Rule that has "Department of Environment and Natural Resources" may be objected to on ambiguity/clarity grounds simply because it is obvious no one at the "Department" or the "Division" looked at the Rule before readoption. It is not RRC Counsel's job to clean up your rules, particularly when it is evident that no effort has been made by CRC staff.

Corrected.

Delete Paragraphs (f) and (g). Unnecessary.

Consistent with 15A NCAC 07H .1204(e) and (f), which were approved by the RRC and readopted effective December 1, 2021.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2605

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Delete "(s)" in Paragraph (c).

Done.

Paragraph (e), by what criteria is this determined? This should be put in rule, whether in this one or in its own. This is objectionable.

Deleted.

Add a comma after "deed restriction" on line 19.

Done.

Add a comma after "measures" on line 25, and add "as" after "such" on this line.

Done.

One line 26, "etc." is unclear. Do not use.

Deleted.

Add a comma after "watercourses" on line 27.

Done.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2701

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Active voice should be used saying who shall do what. "Persons planning to do X in Y areas shall apply for a general permit..." "This permit shall..." means nothing and this would therefore not be a rule. Objectionable.

Done.

"as set out in ... and according to the rules in this Section" should be deleted as unnecessary. Deleted reference to 07J .1100. The Division believes the remainder is relevant and necessary.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2702

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Each "Approval Procedures" Rule should be the same format and language in those cases where the substantially similar requirement is being enumerated. Please choose language and a format and use it throughout.

This whole rule is objectionable for lack of clarity. See comments for .1302.

Made consistent with 15A NCAC 07H .1202, which was readopted and approved by the RRC effective December 1, 2021.

Combine "The applicant shall provide...", line 5, into the subparagraphs.

Done.

Subparagraph (b)(1) and (2), "confirmation"???. Just confirmation? Or a copy of?

Addressed by requiring evidence.

Paragraph (c), "based on their relevance to the potential impacts of the proposed project"???

How is approval determined? Factors?

Addressed.

Paragraph (d), "written authorization to proceed" or "general authorization" or "authorization"???. Is this a permit? Or is it something different?

Changed to "permit".

Line 21, "shall be necessary to re-examine". Use active voice. Who submits request to whom for permit to be reissued?

Changed.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2703

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

See comments for .1303. Those apply here. Fix.

Department named spelled out.

Permit fee usage limitation already in statute. Division does not understand how this would be relevant to include in a rule for the public.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2704

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a) repeats .2701. Delete.
Deleted.

Use active voice.

Paragraph (b), what is the specific authority for "periodic inspections"?
Consistent with 15A NCAC 07H .1204(b), which was readopted and approved by the RRC effective December 1, 2021.

What does Paragraph (c) mean? Unclear.
Placement of marsh sills cannot prevent navigation of public waters.

What does everything on lines 12 and 13 mean? "Unresolved questions"?
Unanswered or open questions about the potential impacts of a proposed project.

Delete Paragraphs (e) and (f) as unnecessary.
Consistent with 15A NCAC 07H .1204(e) and (f), which were readopted and approved by the RRC effective December 1, 2021.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2705

DEADLINE FOR RECEIPT: Friday, July 18, 2022

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

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

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

Paragraph (a), the permit is for development. What is the authority for regulating vegetation?
113A-113(b)(1). Citation added.

Paragraph (f), "Deviation from these opening requirements shall be allowable following coordination with the N.C. Division of Coastal Management" is waiver. See G.S. 150B-19(6). This is objectionable for lack of clarity when waiver is allowed like this.
Waiver removed.

Paragraph (k), line 31, "as defined in 15A NCAC..." It is not. This is objectionable for lack of clarity.
Replaced "defined" with "illustrated".

Paragraph (l), change "must" to "shall" on line 35.
Changed.

Paragraph (s), again with the "other similar materials that are approved by the NC Division of Coastal Management." This is unclear. Also, what is "pollutant"? Define or delete?
All of the CRC's General Permits are formatted in this manner and are familiar to the regulated community. Rules previously readopted, such as 15A NCAC 7H .1200 were readopted and approved by the RRC effective December 2021. Also see similar language in 15A NCAC 7H .1105(d) that was approved by the RRC and readopted effective April 1, 2022.
"Pollutant" removed.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: July 13, 2022

1 15A NCAC 07H .1301 is readopted as published **with changes** in 34:09 NCR 758 as follows:

2
3 **SECTION .1300 – GENERAL PERMIT TO CONSTRUCT BOAT RAMPS ALONG ESTUARINE AND**
4 **PUBLIC TRUST SHORELINES AND INTO ESTUARINE AND PUBLIC TRUST WATERS**

5
6 **15A NCAC 07H .1301 PURPOSE**

7 A ~~permit under this Section shall allow~~ **A person requesting for** the construction of boat ramps along estuarine and
8 public trust shorelines and into ~~estuarine~~ **Estuarine** and ~~public trust waters~~ **Public Trust Waters** ~~AECs~~ **AECs**
9 ~~according to the authority provided in Subchapter 07J .1100 and~~ **shall apply for a General Permit** according to the
10 ~~Rules~~ **rules** in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent
11 to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine
12 Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion
13 rates than the adjacent Ocean Erodible Area.
14

15 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
16 *Eff. March 1, 1984;*
17 *Amended Eff. April 1, 2003; August 1, 2000;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1302 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1302 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and his name and address.

7 (b) The applicant shall provide:

8 (1) the site location, dimensions of the project area and name and his or her address; and

9 (2)(4) confirmation that a written statement has been obtained signed by the adjacent riparian property
10 owners indicating that they have no objections to the proposed work; or

11 (3)(2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
12 proposed work. The notice shall instruct adjacent property owners to provide any written comments
13 on the proposed development in writing to the Division of Coastal Management within ten days of
14 receipt of the notice, and, notice and indicate that no response shall be interpreted as no objection.
15 DCM Division staff shall review all comments and determine, based on their relevance to the
16 potential impacts of the proposed project, if the proposed project can be approved by a General
17 Permit. If DCM Division staff finds that the comments are worthy of more in-depth review,
18 determines that the project exceeds the guidelines established by the General Permit Process, DCM
19 the Division shall notify the applicant that he or she must submit an application for a major
20 development permit.

21 (c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal
22 Management representative to review the proposed development, so that the proposed boat ramp alignment may be
23 appropriately marked. Written authorization A permit to proceed with the proposed development may shall be issued
24 if the Division representative finds that the application meets all the requirements of this Subchapter, during this visit.
25 Construction of the boat ramp structure shall be completed within 120 days of this visit issuance of the General Permit
26 or the general authorization shall expire, expire and it shall be necessary to re-examine the proposed development to
27 determine if the General Permit may be reissued.

28
29 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

30 *Eff. March 1, 1984;*

31 *Amended Eff. August 1, 2007; September 1, 2006; January 1, 1990;*

32 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1303 is readopted as published **with changes** in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1303 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the

5 ~~Department.~~Department of Environmental Quality.

6

7 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

8 *Eff. March 1, 1984;*

9 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1304 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1304 GENERAL CONDITIONS**

4 (a) Structures authorized by this permit shall be non-commercial boat ramps constructed of acceptable material and
5 conforming to the standards herein.

6 (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources
7 Environmental Quality to make periodic inspections at any time deemed necessary in order to be sure ensure that the
8 activity being performed under authority of this the general permit set forth in this Section is in accordance with the
9 terms and conditions prescribed herein.

10 (c) There shall be no unreasonable interference with navigation or public use of the waters by the public during or
11 after construction, through the existence of boat ramps.

12 (d) This The permit set forth in this Section will shall not be applicable to proposed construction where the Department
13 has determined, determines that the proposed activity endanger based on an initial review of the application, that notice
14 and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed
15 activity's impact on adjoining properties or significantly affect historic, cultural, scenic, conservation or recreational
16 values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4), on water quality; air quality; coastal wetlands; cultural
17 or historic sites; wildlife; fisheries resources; or public trust rights.

18 (e) This The permit set forth in this Section does not eliminate the need to obtain any other required State, state, local,
19 or federal authorization.

20 (f) Development carried out under this the permit set forth in this Section must shall be consistent with all State,
21 federal, local requirements, AEC rules, and local land use plans current at the time of authorization.

22
23 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
24 *Eff. March 1, 1984;*
25 *Amended Eff. May 1, 1990;*
26 *RRC Objection due to ambiguity Eff. May 19, 1994;*
27 *Amended Eff. August 1, 1998; July 1, 1994;*
28 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1305 is readopted as published **with changes** in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1305 SPECIFIC CONDITIONS**

4 (a) Boat ramps shall be no wider than 15 feet and shall not extend more than 20 feet waterward of the normal high
5 water level or normal water level.

6 (b) Excavation and ground disturbing activities above and below the normal high water level or normal water level
7 will be limited to that **absolutely** necessary to establish adequate ramp slope and provide a ramp no greater in size than
8 specified by this general permit.

9 (c) Placement of fill materials below normal high water level, or normal water level, will be limited to the ramp
10 structure and any associated riprap groins. Boat ramps may be constructed of concrete, wood, steel, clean riprap, marl,
11 or any other suitable equivalent materials approved by the Division of Coastal Management. No coastal wetland
12 vegetation shall be excavated or filled at any time during construction.

13 (d) The permit set forth in this Section allows for up to a six-foot wide launch access dock (fixed or floating)
14 immediately adjacent to a new or existing boat ramp. The length shall be limited to the length of the permitted boat
15 ramp **(with with** a maximum length of 20 feet waterward of the normal high water level or normal water **level. level).**
16 No permanent slips are authorized by this permit.

17 (e) Groins shall be allowed as a structural component on one or both sides of a new or existing boat ramp to reduce
18 scouring. The groins shall be limited to the length of the permitted boat ramp (with a maximum length of 20 feet
19 waterward of the normal high water level or normal water level).

20 (f) The height of sheetpile groins shall not exceed one foot above normal high water level or normal water level and
21 the height of riprap groins shall not exceed two feet above normal high water level or normal water level.

22 (g) Riprap groins shall not exceed a base width of five feet.

23 (h) Material used for groin construction shall be free from loose dirt or any other pollutant. Riprap material must be
24 of sufficient size to prevent its movement from the approved alignment by wave action or currents.

25 (i) "L" and "T" sections shall not be allowed at the end of groins.

26 (j) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet
27 pile, or other suitable equivalent materials approved by the Division of Coastal Management.

28 (k) Boat ramps and their associated structures authorized under this permit shall not interfere with the access to any
29 riparian property and shall have a minimum setback of 15 feet between any part of the boat ramp or associated
30 structures and the adjacent property owners' areas of riparian access. The minimum setbacks provided in the rule may
31 be waived by the written agreement of the adjacent riparian **owners, owner(s),** or when two adjoining riparian owners
32 are co-applicants. Should the adjacent property be sold before construction of the boat ramp or associated structures
33 commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and
34 submit it to the Division of Coastal Management prior to initiating any development of the boat ramp or associated
35 structures authorized under this permit.

36
37 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

- 1 *Eff. March 1, 1984;*
- 2 *Amended Eff. August 1, 2014;*
- 3 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1401 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **SECTION .1400 - GENERAL PERMIT FOR CONSTRUCTION OF GROINS IN ESTUARINE AND**
4 **PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

5
6 **15A NCAC 07H .1401 PURPOSE**

7 A permit under this section shall allow person requesting the construction of groins in the estuarine Estuarine and
8 public trust waters Public Trust Waters AECs AECs according to the authority provided in Subchapter 07J .1400 and
9 shall apply for a General Permit according to the rules in this Section. This general permit shall not apply to the
10 oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those
11 shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland
12 vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

13
14 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124(c);*
15 *Eff. March 1, 1984;*
16 *Temporary Amendment Eff. December 1, 2002;*
17 *Amended Eff. February 1, 2009; August 1, 2004; April 1, 2003;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1402 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1402 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and the applicant's name and address.

7 (b) The applicant shall provide:

8 (1) the site location, dimensions of the project area and name and his or her address; and

9 (2)(4) confirmation that a written statement has been obtained signed by the adjacent riparian property
10 owners indicating that they have no objections to the proposed work; or

11 (3)(2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
12 proposed work. The notice shall instruct adjacent property owners to provide any written comments
13 on the proposed development in writing to the Division of Coastal Management within 10 ten days
14 of receipt of the notice. ~~The notice~~ and shall also indicate that no response shall be interpreted as no
15 objection. ~~The~~ Division staff of Coastal Management shall review all comments and determine,
16 based on their relevance to the potential impacts of the proposed project, if the proposed project can
17 be approved by a General Permit. ~~If the Division of Coastal Management staff finds that the~~
18 comments are worthy of more in-dept review, ~~determines that the project exceeds the rules~~
19 established by the General Permit process, the Division shall notify the applicant ~~shall be notified~~
20 that he or she must submit an application for a major development permit, ~~permit shall be required.~~

21 (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
22 representative to review the proposed development, ~~so that the proposed groin alignment can be marked.~~ Written
23 authorization ~~A permit~~ to proceed with the proposed development shall be issued if the Division representative finds
24 that the application meets all the requirements of this Subchapter, ~~during this visit.~~ Construction shall be completed
25 within 120 days of the issuance of the permit or the authorization shall expire and it shall be necessary to re-examine
26 the alignment to determine if the general authorization may be reissued.

27 (d) Any modification or addition to the authorized project shall require prior approval from the Division of Coastal
28 Management.

29
30 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

31 *Eff. March 1, 1984;*

32 *Amended Eff. February 1, 2009; October 1, 2007; August 1, 2004; May 1, 1990; January 1, 1990;*

33 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1403 is readopted as published **with changes** in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1403 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the

5 ~~Department.~~ Department of Environmental Quality.

6

7 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

8 *Eff. March 1, 1984;*

9 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1404 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1404 GENERAL CONDITIONS**

4 (a) Structures authorized by a general permit in this Section shall be timber, sheetpile, or riprap groins, groins
5 conforming to the standards in this Rule.

6 (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources
7 Environmental Quality to make periodic inspections at any time deemed necessary in order to ensure that the activity
8 being performed under authority of this the general permit set forth in this Section is in accordance with the terms and
9 conditions prescribed herein.

10 (c) The placement of groins authorized in this Rule shall not interfere with the established or traditional rights of
11 navigation of the waters by the public.

12 (d) This permit set forth in this Section shall not be applicable to proposed construction where the Division of Coastal
13 Management Department determines that the proposed activity endanger has determined, based on an initial review
14 of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved
15 questions concerning the proposed activity's impact on adjoining properties or significantly affect historic, cultural,
16 scenic, conservation or recreational values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4), on water quality;
17 air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

18 (e) This The permit set forth in this Section shall not eliminate the need to obtain any other required state, State, local,
19 or federal authorization.

20 (f) Development carried out under this the permit set forth in this Section shall be consistent with all local State,
21 federal, local requirements, AEC rules, and local land use plans current at the time of authorization.

22
23 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
24 *Eff. March 1, 1984;*
25 *Amended Eff. May 1, 1990;*
26 *RRC Objection due to ambiguity Eff. May 16, 1994;*
27 *Amended Eff. August 1, 1998; July 1, 1994;*
28 *Temporary Amendment Eff. December 1, 2002;*
29 *Amended Eff. February 1, 2009; August 1, 2004;*
30 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1405 is readopted as published **with changes** in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1405 SPECIFIC CONDITIONS**

4 (a) Groins shall be perpendicular to the shoreline and shall not extend more than 25 feet waterward of the normal
5 high water or normal water level.

6 (b) Riprap groins shall not exceed a base width of 10 feet.

7 (c) Groins shall be set back at least 15 feet from the riparian access dividing line as measured from the closest point
8 of the structure. This setback may be waived by written agreement of the adjacent riparian **owners** **owner(s)** or when
9 two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin
10 commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and
11 submit it to the Division of Coastal Management prior to initiating any development of the groin.

12 (d) The height of sheetpile groins shall not exceed one foot above normal high water or the normal water level and
13 the height of riprap groins shall not exceed two feet above normal high water or the normal water level.

14 (e) Material used for groin construction shall be free from loose **dirt, dirt or any other pollutant.** Groin material must
15 be of sufficient size to prevent its movement from the site by wave action or currents.

16 (f) Structure spacing shall be two times the groin length as measured from the centerline of the structure. Spacing
17 may be less than two times the groin length around channels, docking facilities, boat lifts, or boat ramps and when
18 positioned to prevent sedimentation or accretion in a particular area.

19 (g) "L" and "T" sections shall not be allowed at the end of groins.

20 (h) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet
21 pile or other suitable equivalent materials approved by the Division of Coastal Management.

22
23 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
24 *Eff. March 1, 1984;*
25 *Temporary Amendment Eff. December 1, 2002;*
26 *Amended Eff. February 1, 2009; August 1, 2004;*
27 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1501 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING**
4 **CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS,**
5 **AND COASTAL SHORELINE AECS**

6
7 **15A NCAC 07H .1501 PURPOSE**

8 This permit for A person requesting excavation within or connecting to existing canals, channels, basins, or ditches in
9 estuarine waters, public trust waters and coastal shoreline Estuarine Waters, Public Trust Waters and Coastal
10 Shorelines AECS shall allow excavation within existing canals, channels, basins, and ditches in estuarine and public
11 trust waters for the purpose of maintaining water depths and creating new boat basins from non-wetland areas that
12 will be used for private, non-commercial activities, activities, shall apply for a General Permit according to the rules
13 of this Section. This general permit is also subject to the procedures outlined in Subchapter 07J .1100.

14
15 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);*
16 *Eff. July 1, 1984;*
17 *Amended Eff. July 1, 2015; December 1, 1987;*
18 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1502 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1502 APPROVAL PROCEDURES**

4 (a) ~~The An~~ applicant for a ~~general permit~~ General Permit under this Subchapter ~~for excavation within or connecting~~
5 ~~to existing canals, channels, basins, or ditches in estuarine waters, public trust waters and coastal shoreline areas of~~
6 ~~environmental concern~~ shall contact the Division of Coastal Management and request approval for development.
7 ~~Applicants shall provide their name and address, the site location, and the dimensions of the project area.~~

8 (b) The applicant ~~must~~ shall provide:

9 (1) the site location, dimensions of the project area and name and his or her address; and

10 ~~(2)(4)~~ A confirmation that a written statement has been obtained signed by the adjacent riparian property
11 owners indicating that they have no objections to the proposed work; or

12 ~~(3)(2)~~ Certified mail return receipts (or copies thereof) indicating confirmation that the adjacent riparian
13 property owners have been notified by certified mail of the proposed work. ~~Such~~ The notice ~~should~~
14 shall instruct adjacent property owners to provide any written comments on the proposed
15 development in writing ~~for consideration by permitting officials~~ to the Division of Coastal
16 Management within ten days of receipt of the ~~notice,~~ notice and indicate that no response will be
17 interpreted as no objection. Division staff shall review all comments and determine, based on their
18 relevance to the potential impacts of the proposed project, if the proposed project can be approved
19 by a General Permit. If ~~DCM~~ Division staff finds that the comments are worthy of more in-dept
20 review, determines that the project exceeds the guidelines established by the General Permit Process,
21 DCM the Division shall notify the applicant that he or she must submit an application for a major
22 development permit.

23 ~~(e) DCM staff will review the permit request and comments and determine, based on the potential impacts of the~~
24 ~~proposed project, whether the proposed project complies with the requirements of this Section and can be approved~~
25 ~~by a General Permit. If DCM staff finds that the proposed project does not comply with the requirements of this~~
26 ~~Section, the applicant will be notified that they must submit an application for a major development permit in~~
27 ~~accordance with 15A NCAC 07J .0200.~~

28 ~~(c)(4)~~ No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management
29 representative to review the proposed development, inspect and mark the proposed area of excavation and spoil
30 disposal. Written authorization A Permit to proceed with the proposed development ~~may~~ shall be issued if the Division
31 representative finds that the application meets all the requirements of this Subchapter. ~~during this site visit.~~ All
32 excavation shall be completed within 120 days of the date of ~~permit issuance,~~ issuance of the General Permit or the
33 authorization shall expire and it shall be necessary to re-examine the proposed development to determine if the General
34 Permit may be reissued.

35
36 *History Note:* Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; ~~113-229(e1);~~ 113-229(c1);
37 *Eff. July 1, 1984;*

1 *Amended Eff. July 1, 2015; January 1, 1990; December 1, 1987;*
2 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1503 is readopted as published **with changes** in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .1503 APPLICATION FEE**

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

7

8 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

9 *Eff. July 1, 1984;*

10 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1504 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1504 GENERAL CONDITIONS**

4 (a) Individuals shall allow representatives of the Division of Coastal Management Department of Environmental
5 Quality to make periodic inspections at any time necessary to ensure that the activity being performed under authority
6 of this the general permit for excavation within or connecting to existing canals, channels, basins, or ditches in
7 estuarine waters, public trust waters and coastal shoreline areas of environmental concern, is in accordance with the
8 terms and conditions set forth in this Section, prescribed herein.

9 ~~(b) This general permit shall not be applicable to proposed maintenance excavation when the Division determines~~
10 ~~that the proposed activity will adversely affect adjacent property.~~

11 ~~(b)(e) This permit set forth in this Section shall not be applicable to proposed construction where the Division~~
12 ~~Department that the proposed activity endanger has determined, based on an initial review of the application, that~~
13 ~~notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the~~
14 ~~proposed activity's impact on adjoining properties or significantly affect historic, cultural, scenic, conservation or~~
15 ~~recreational values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4), on water quality; air quality; coastal~~
16 ~~wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.~~

17 (d) No new basins shall be allowed that result in closure of shellfish waters according to the closure policy of the
18 Division of Marine Fisheries, 15A NCAC 18A .0911.

19 (e) ~~This The~~ permit set forth in this Section shall not eliminate the need to obtain any other required state, State, local,
20 or federal authorization, authorization, nor to abide by regulations adopted by any federal or other state agency.

21 (f) Development carried out under this the permit set forth in this Section shall be consistent with all State, federal,
22 local requirements, AEC rules, and local Land Use Plans current at the time of authorization.

23
24 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(e)113-229(c1);*
25 *Eff. July 1, 1984;*
26 *Amended Eff. May 1, 1990; December 1, 1987;*
27 *RRC Objection due to ambiguity Eff. May 19, 1994;*
28 *Amended Eff. July 1, 2015; August 1, 1998; July 1, 1994;*
29 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1505 is readopted as published with changes in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1505 SPECIFIC CONDITIONS**

4 Proposed maintenance excavation shall meet each of the following specific conditions to be eligible for authorization
5 by this general permit.

- 6 (1) New basins shall be allowed only when they are located entirely in high ground and join existing
7 man-made canals or basins.
- 8 (2) New basins shall be no larger than 50' 50 feet in either length or width and no deeper than the
9 waters they join.
- 10 (3) New basins shall be for the private non-commercial use of the land owner.
- 11 (4) Maintenance excavation shall involve the removal of no more than 1,000 cubic yards of material as
12 part of a single and complete project.
- 13 (5) All excavated material shall be placed entirely on high ground above the mean high tide or ordinary
14 high water line, and above any marsh marsh, or other wetland.
- 15 (6) All spoil material shall be stabilized or retained so as to prevent any excavated material from
16 re-entering the surrounding waters, marsh or other wetlands.
- 17 (7) The proposed project shall not involve the excavation of any marsh, submerged aquatic vegetation
18 (as as defined at 15A NCAC 03I .0101 by the Marine Fisheries Commission); Commission, or other
19 wetlands.
- 20 (8) Maintenance excavation shall not exceed the original dimensions of the canal, channel, basin basin,
21 or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor
22 deeper than connecting channels.
- 23 (9) Proposed excavation shall not promote or provide the opportunity for a change to allow a public or
24 commercial use. use at the time of project review.
- 25 (10) Maintenance excavation as well as excavation of new basins shall not be allowed within or with
26 connections to primary nursery areas without prior approval from the Division of Marine Fisheries
27 or Wildlife Resources Commission. Commission (whichever is applicable).
- 28 (11) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin
29 to stabilize the shoreline from erosion.
- 30 (12) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal
31 water level at any point along its alignment.
- 32 (13) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other suitable
33 materials approved by the Division of Coastal Management. Approval of other suitable materials
34 shall be based upon the potential environmental impacts of the proposed material.
- 35 (14) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208.
36 The bulkhead shall be constructed prior to any backfilling activities and shall be structurally tight
37 so as to prevent seepage of backfill materials through the structure.

1 15A NCAC 07H .1601 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **SECTION .1600 - GENERAL PERMIT FOR THE INSTALLATION OF AERIAL AND SUBAQUEOUS**
4 **UTILITY LINES WITH ATTENDANT STRUCTURES IN COASTAL WETLANDS: ESTUARINE**
5 **WATERS: PUBLIC TRUST WATERS AND ESTUARINE SHORELINES**
6

7 **15A NCAC 07H .1601 PURPOSE**

8 A ~~permit under this Section shall allow for~~ person requesting the installation of utility lines both aerially and
9 subaqueously in the ~~coastal wetland,~~ Coastal Wetland, ~~estuarine water,~~ Estuarine Waters, ~~public trust areas~~ Public
10 Trust Areas and ~~estuarine~~ Estuarine and ~~public trust shoreline~~ Public Trust Shoreline AECs shall apply for a General
11 Permit ~~according to the authority provided in Subchapter 7J .1100 and~~ according to the rules in this Section.- This
12 general permit shall not apply to the ocean hazard AECs.
13

14 *History Note:* Authority G.S. ~~113-229(c1);~~ 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);
15 *Eff. March 1, 1985;*
16 *Amended Eff. August 1, 2000; August 1, 1998;*
17 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1602 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1602 APPROVAL PROCEDURES**

4 (a) ~~The An~~ applicant for a General Permit under this Subsection ~~must shall~~ contact the Division of Coastal
5 Management and complete an application form requesting request approval for development. The applicant shall
6 provide information on site location, dimensions of the project area, and his name and address.

7 (b) The applicant ~~must shall~~ provide:

8 (1) the site location, dimensions of the project area and name and his or her address; and

9 (2)(4) confirmation that a written statement has been obtained signed by the adjacent riparian property
10 owners indicating that they have no objections to the proposed work; or

11 (3)(2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
12 proposed work. ~~Such~~ The notice ~~should shall~~ instruct adjacent property owners to provide any
13 comments on the proposed development in writing for consideration by permitting officials to the
14 Division of Coastal Management within ten days of receipt of the ~~notice, and, and~~ indicate that no
15 response will be interpreted as no objection. DCM Division staff ~~will shall~~ review all comments
16 and determine, based on their relevance to the potential impacts of the proposed project, if the
17 proposed project can be approved by a General Permit. If DCM Division staff finds that the
18 comments are worthy of more in-depth review, the Division shall notify the applicant ~~will be~~
19 ~~notified~~ that he ~~or she~~ must submit an application for a major development permit.

20 (c) No work shall begin until an on-site meeting is held with the applicant and ~~appropriate a~~ Division of Coastal
21 Management representative to review the proposed development. ~~so that the utility line alignment can be appropriately~~
22 ~~marked. Written authorization A Permit~~ to proceed with the proposed development ~~will shall~~ be issued if the Division
23 representative finds that the application meets all the requirements of this Subchapter during this visit. Construction
24 on the utility line must begin within twelve months of the date of permit issuance or the authorization shall expire and
25 it shall be necessary to re-examine the proposed development to determine if the General Permit may be reissued. this
26 ~~visit or the general authorization expires.~~

27
28 *History Note: Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; ~~113A-229(e); 113-229(c1);~~*
29 *Eff. March 1, 1985;*
30 *Amended Eff. January 1, 1990;*
31 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1603 is readopted as published with changes in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .1603 PERMIT FEE**

4 The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the

5 Department.Department of Environmental Quality.

6

7 *History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113-*

8 *229(c1);*

9 *Eff. March 1, 1985;*

10 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .1604 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1604 GENERAL CONDITIONS**

4 (a) Utility lines for the purpose of this general permit or are any pipes or pipelines for the transportation of potable
5 water, domestic sanitary sewage, natural gas, and any cable, line, or wire for the transmission, for any purpose, of
6 electrical energy, telephone and telegraph messages, and radio and television communication.

7 (b) There must shall be no resultant change in alteration of preconstruction bottom contours. Authorized fill includes
8 only that necessary to backfill or bed the utility line. Any excess material must shall be removed to an upland disposal
9 area.

10 (c) The utility line crossing will shall not adversely affect a public water supply intake.

11 (d) The utility line route or construction method will shall not disrupt the movement of those species of aquatic life
12 indigenous to the waterbody.

13 (e) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural
14 Resources Environmental Quality to make periodic inspections at any time necessary to ensure that the activity being
15 performed under authority of this general permit the General Permit is in accordance with the terms and conditions
16 prescribed herein.

17 (f) This general The permit set forth in this Section will shall not be applicable to proposed construction where the
18 Department has determined, determines that the proposed activity endangers based on an initial review of the
19 application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions
20 concerning the proposed activity=s impact on adjoining properties or significantly affect historic, cultural, scenic,
21 conservation or recreational values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4). on water quality; air
22 quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

23 (g) This The permit set forth in this Section does not eliminate the need to obtain any other required state, State, local,
24 or federal authorization, authorization, nor, to abide by regulations adopted by any federal or other state agency.

25 (h) Development carried out under this the permit set forth in this section must shall be consistent with all State,
26 federal, local requirements, AEC guidelines, and local Land Use Plans current at the time of authorization.

27
28 *History Note:* Authority G.S. 113-229(e1); 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1)
29 Eff. March 1, 1985;
30 Amended Eff. May 1, 1990;
31 RRC Objection due to ambiguity Eff. May 19, 1994;
32 Amended Eff. August 1, 1998; July 1, 1994;
33 Readopted Eff. October 1, 2022.

1 15A NCAC 07H .1605 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1605 SPECIFIC CONDITIONS**

4 Proposed utility line installations must shall meet each of the following specific conditions to be eligible for
5 authorization by this general permit:

- 6 (1) All domestic sanitary sewer line requests must be accompanied by a statement of prior approval
7 from the NC Division Water Quality.
- 8 (2) All spoils which are permanently removed must be placed on a high ground disposal site and
9 stabilized so as not to return to waters, marsh marsh, or other wetlands.
- 10 (3) Any additional backfill material required must shall be consist of clean sand or rock and not contain
11 free of organic matter.
- 12 ~~(4) Cuts through wetlands must be minimized.~~
- 13 ~~(5)(4)~~ Finished grades or subaqueous or wetland crossing must be returned to preproject contours.
- 14 ~~(6)(5)~~ There can be no work within any productive shellfish beds.
- 15 ~~(7)(6)~~ No excavation or filling activities will be permitted between April 1 and September 30 of any year
16 within any designated primary nursery area.
- 17 ~~(8)(7)~~ Subaqueous lines must be placed at a depth of six feet below the project depth of federal projects.
18 In other areas For non-federal projects, subaqueous lines shall they will be installed at a minimum
19 depth of two feet below the bottom contour.
- 20 ~~(9)(8)~~ The minimum clearance for aerial communication lines or any lines not transmitting electricity will
21 shall be 10' 10 feet above the clearance required for bridges in the vicinity.
- 22 ~~(10)(9)~~ The minimum clearance for aerial electrical transmission lines shall be consistent with those
23 established by the US Army Corps of Engineers and US Coast Guard.
- 24 ~~(11)(10)~~ The installation of a utility line on pipe bents or otherwise above the elevation of mean high or mean
25 ordinary water must be of sufficient height to allow for traditional navigation in the water body.
26 Additionally the The utility line must shall not interfere with the waterflow of normal or flood
27 waters.
- 28 ~~(12)(11)~~ Natural gas lines must shall not exceed 11 inches in diameter.

29
30 *History Note:* Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);
31 Eff. March 1, 1985;
32 Amended Eff. August 1, 1998;
33 Readopted Eff. October 1, 2022.
34

1 15A NCAC 07H .2001 is readopted as published **with changes** in 34:09 NCR 759 as follows:

2
3 **SECTION .2000 - GENERAL PERMIT FOR AUTHORIZING MINOR MODIFICATIONS AND REPAIR**
4 **TO EXISTING PIER/MOORING FACILITIES IN ESTUARINE AND PUBLIC TRUST WATERS AND**
5 **OCEAN HAZARD AREAS**

6
7 **15A NCAC 07H .2001 PURPOSE**

8 ~~A permit under this Section shall allow for~~ **A person requesting** reconfiguration, minor modifications, ~~repair and~~
9 ~~repair, or~~ improvements to existing pier and mooring facilities in estuarine waters and public trust areas ~~according to~~
10 ~~the authority provided in Subchapter 07J .1100 of this Chapter and shall apply for a general permit~~ according to the
11 rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the
12 Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC.
13 Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent
14 Ocean Erodible Area.

15
16 *History Note: Authority G.S. 113A-107; 113A-118.1;*
17 *Eff. October 1, 1993;*
18 *Amended Eff. April 1, 2003;*
19 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2002 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .2002 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and his/her name and address.

7 (b) The applicant shall provide:

8 ~~(1) a dated plat(s) showing existing development and the proposed development; and~~

9 (1) information on site location, dimensions of the project area, and applicant name and address;

10 ~~(2) confirmation that that a written statement has been obtained signed by the adjacent riparian property~~
11 ~~owners indicating that they have no objections to the proposed work; or~~

12 ~~(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the~~
13 ~~proposed work. The notice shall instruct adjacent property owners to provide any comments on the~~
14 ~~proposed development in writing for consideration by permitting officials to the Division of Coastal~~
15 ~~Management within 10 days of receipt of the notice and indicate that no response will be interpreted~~
16 ~~as no objection. Division staff shall review all comments and determine, based on their relevance to~~
17 ~~the potential impacts of the proposed project, if the proposed project can be approved by a General~~
18 ~~Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division~~
19 ~~shall notify the applicant that he or she must submit an application for a major development permit.~~

20 ~~(A) a written statement has been obtained and signed by the adjacent riparian property owners~~
21 ~~indicating that they have no objections to the proposed work; or~~

22 ~~(B) the adjacent property owners have been notified by certified mail of the proposed work.~~
23 ~~The notice shall instruct adjacent property owners to provide any comments on the~~
24 ~~proposed development in writing for consideration by permitting officials to the Division~~
25 ~~of Coastal Management within ten days of receipt of the notice, and, indicate that no~~
26 ~~response will be interpreted as no objection.~~

27 ~~(e) DCM staff shall review all comments. If DCM determines that the comments are relevant to the potential impacts~~
28 ~~of the proposed project and the permitting issues raised by the comments are worthy of more detailed review, DCM~~
29 ~~shall notify the applicant that he/she must submit an application for a major development permit.~~

30 ~~(d)(c) [Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and~~
31 ~~the applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed~~
32 ~~within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or~~
33 ~~continue construction.] No work shall begin until an on-site meeting is held with the applicant and a Division of~~
34 ~~Coastal Management representative to review the proposed development. A permit to proceed with the proposed~~
35 ~~development shall be issued if the Division representative finds that the application meets all the requirements of this~~
36 ~~Subchapter. Construction shall be completed within 120 days of the issuance of the general permit or the authorization~~

1 shall expire and it shall be necessary to re-examine the proposed development to determine if the general permit may
2 be reissued.

3 (d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal
4 Management.

5

6 *History Note: Authority G.S. 113A-107; 113A-118.1;*

7 *Eff. January 1, 1994;*

8 *Amended Eff. August 1, 2007;*

9 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2003 is readopted as published **with changes** in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2003 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the

5 ~~Department.~~ Department of Environmental Quality.

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. October 1, 1993;*

9 *Amended Eff. September 1, 2006; August 1, 2000;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2004 is readopted as published **with changes** in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2004 GENERAL CONDITIONS**

4 ~~(a)~~ Structures authorized by this permit shall conform to the standards herein.

5 ~~(b)~~(a) Individuals shall allow authorized representatives of the Department of **Environment and Natural Resources**
6 **Environmental Quality** to make periodic inspections at any time deemed necessary in order to be sure that the activity
7 being performed under the authority of this general permit is in accordance with the terms and conditions prescribed
8 herein.

9 ~~(c)~~(b) There shall be no **unreasonable** interference with navigation or use of the waters by the public by the existence
10 of piers or mooring pilings.

11 ~~(d)~~(c) This permit will not be applicable to proposed construction where the Department has determined, based on an
12 initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are
13 unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality;
14 coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

15 ~~(e)~~(d) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

16 ~~(f)~~(e) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local
17 land use plans current at the time of authorization.

18 ~~(g)~~(f) This general permit will not be applicable where the Department determines that the proposed modification
19 will result in closure of waters to shellfishing under rules adopted by the Commission for Public Health.

20

21 *History Note: Authority G.S. 113A-107; 113A-118.1;*

22 *Eff. January 1, 1994;*

23 *Amended Eff. August 1, 1998;*

24 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2005 is readopted as published **with changes** in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2005 SPECIFIC CONDITIONS**

4 (a) All proposed work must be carried out within the existing footprint of the development with no increase in the
5 number of **slips nor any slips, and no** change in the existing use. "Existing footprint" is defined as the area delineated
6 by the outer most line of tie pilings, ends of piers, and upland basin or area within an enclosing breakwater, whichever
7 is greater.

8 (b) Modifications to piers and mooring facilities shall not interfere with the access to any riparian property, and shall
9 have a minimum setback of 15 feet between any part of the **pier(s) pier** or **piling(s) pilings**, and the adjacent property
10 lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the
11 rule may be waived by the written agreement of the adjacent riparian **owner(s), owners**, or when two adjoining riparian
12 owners are co-applicants. Should the adjacent property be sold before construction of the **pier(s) pier** or **piling(s)**
13 **pilings** commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback
14 and submit it to the Division of Coastal Management prior to initiating any development. The line of division of areas
15 of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then
16 drawing a line perpendicular to a line of the channel so that it intersects with the shore at the point the upland property
17 line meets the water's edge. When shoreline configuration is such that a perpendicular alignment cannot be achieved,
18 the pier shall be aligned to meet the intent of this rule to the maximum extent practicable.

19

20 *History Note: Authority G.S. 113A-107; 113A-118.1;*

21 *Eff. October 1, 1993;*

22 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2101 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **SECTION .2100 - GENERAL PERMIT FOR CONSTRUCTION OF SHEETPILE SILL FOR SHORELINE**
4 **PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

5
6 **15A NCAC 07H .2101 PURPOSE**

7 A general permit pursuant to this Section shall allow the construction of Persons seeking to construct offshore parallel
8 sheetpile sills, sills constructed from timber, vinyl, or steel sheetpiles for shoreline protection in conjunction with
9 existing or created coastal wetlands, wetlands, shall apply for a general permit under this Section. This permit shall
10 only be applicable in public trust areas and estuarine waters according to authority provided in 15A NCAC 07J .1100
11 and according to the procedures and conditions outlined in this subchapter. waters. This permit shall not apply to
12 oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those
13 shorelines that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland
14 vegetation, lower wave energy, and lower erosion rates than in adjoining Ocean Erodible Area.

15
16 *History Note: Authority G.S. 113A-107; 113A-118.1;*
17 *Eff. June 1, 1994;*
18 *Amended Eff. February 1, 2009; April 1, 2003; August 1, 2000;*
19 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2102 is readopted as published with changes in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .2102 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and the applicant's name and address.

7 (b) The applicant shall provide:

8 (1) information on site location, dimensions of the project area, and applicant name and address;

9 (+)(2) confirmation that a written statement has been obtained signed by the adjacent riparian property
10 owners indicating that they have no objections to the proposed work; or

11 (-)(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
12 proposed work. The notice shall instruct adjacent property owners to provide written comments on
13 the proposed development to the Division of Coastal Management within 10 days of receipt of the
14 notice, and, notice and indicate that no response shall be interpreted as no objection. The Division
15 staff of Coastal Management shall review all comments and determine, based on their relevance to
16 the potential impacts of the proposed project, if the proposed project can be approved by a General
17 Permit. If the Division of Coastal Management determines that the project exceeds the rules
18 established by the General Permit Process, DCM shall notify the applicant that an application for a
19 major development permit shall be required. If Division staff finds that the comments are worthy of
20 more in-depth review, the Division shall notify the applicant that he or she must submit an
21 application for a major development permit.

22 (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
23 representative so that the proposed sill alignment may be marked. to review the proposed development. Written
24 authorization A permit to proceed with the proposed development shall be issued if the Division representative finds
25 that the application meets all the requirements of this Subchapter. Construction of the sill shall be completed within
26 120 days of the issuance of the general permit or the general authorization shall expire and it shall be necessary to
27 re-examine the alignment proposed development to determine if the general authorization permit may be reissued.

28 (d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal
29 Management.

30
31 *History Note: Authority G.S. 113A-107; 113A-118.1;*
32 *Eff. June 1, 1994;*
33 *Amended Eff. February 1, 2009; October 1, 2007; September 1, 2006; August 1, 2000;*
34 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2103 is readopted as published **with changes** in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2103 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. June 1, 1994;*

9 *Amended Eff. September 1, 2006; August 1, 2000;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2104 is readopted as published with changes in 34:09 NCR 759 as follows:

2

3 **15A NCAC 07H .2104 GENERAL CONDITIONS**

4 ~~(a) This permit authorizes only the construction of sills conforming to the standards herein.~~

5 (b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~
6 Environmental Quality to make periodic inspections at any time deemed necessary in order to ensure that the activity
7 being performed under authority of this general permit is in accordance with the terms and conditions prescribed
8 herein.

9 (c) The placement of sills authorized in this Rule shall not interfere with the established or traditional rights of
10 navigation of the water by the public.

11 (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has
12 determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
13 necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or
14 on ~~water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust~~
15 ~~rights; water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust~~
16 rights.

17 (e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

18 (f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local
19 land use plans current at the time of authorization.

20

21 *History Note: Authority G.S. 113A-107; 113A-118.1;*
22 *RRC Objection due to ambiguity Eff. May 19, 1994;*
23 *Eff. July 1, 1994;*
24 *Amended Eff. February 1, 2009; August 1, 1998;*
25 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2105 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2105 SPECIFIC CONDITIONS**

4 (a) The sill shall be positioned no more than 20 feet waterward of the normal high water or normal water level or 20
5 feet waterward of the waterward edge of existing wetlands at any point along its alignment. For narrow waterbodies
6 (canals, creeks, etc.) the sill alignment shall not be positioned offshore more than one sixth (1/6) the width of the
7 waterbody.

8 (b) Sills authorized under this General Permit shall be allowed only in waters that average less than three feet in depth
9 along the proposed alignment as measured from the normal high water or normal water level.

10 ~~(c) Where the Division of Coastal Management staff determine that insufficient wetland habitat exists along the~~
11 ~~permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate~~
12 ~~wetland species landward of the sill structure as directed by the Division of Coastal Management staff.~~

13 ~~(d)(c)~~ Construction authorized by this general permit shall be limited to a maximum length of 500 feet.

14 ~~(e)(d)~~ The sill shall be constructed with an equal gap between each sheathing board totaling at least one inch of open
15 area every linear foot of sill. The sill shall have at least one five-foot opening at every 100 feet. The sill sections shall
16 be staggered and overlap as long as the five-foot separation between sections is maintained. Overlapping sections
17 shall not overlap more than 10 feet.

18 ~~(f)(e)~~ The height of the sill shall not exceed six inches above normal high water or the normal water level.

19 ~~(g)(f)~~ Offshore sill sections shall be set back 15 feet from the riparian access dividing line. The line of division of
20 riparian access shall be established by drawing a line along the channel or deep water in front of the property, then
21 drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland
22 property line meets the water's edge. The set back may be waived by written agreement of the adjacent riparian
23 owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before
24 construction of the sill begins, the applicant shall obtain a written agreement with the new owner waiving the minimum
25 setback and submit it to the Division of Coastal Management prior to initiating any construction of the sill.

26 ~~(h)(g)~~ Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean high
27 water.

28 ~~(i)(h)~~ No backfill of the sill or any other fill of wetlands, estuarine waters, public trust areas, or highground is
29 authorized by this general permit.

30 ~~(j)(i)~~ No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

31 ~~(k)(j)~~ The sill shall be constructed of vinyl or steel sheet pile, formed concrete, timber, or other suitable equivalent
32 materials approved by the Division of Coastal Management.

33 ~~(l)(k)~~ Perpendicular sections, return walls, or sections that would enclose estuarine waters or public trust areas shall
34 not be allowed under this permit.

35 ~~(m)(l)~~ The permittee will maintain the sill **in good condition and** in conformance with the terms and conditions of this
36 permit or the remaining sill structure shall be removed within 90 days of notification from the Division of Coastal
37 Management.

1

2 *History Note: Authority G.S. 113A-107; 113A-118.1;*

3 *Eff. June 1, 1994;*

4 *Amended Eff. February 1, 2009; August 1, 2000;*

5 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2201 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2
3 **SECTION .2200 – GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND**
4 **BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN**
5 **HAZARD AREAS**

6
7 **15A NCAC 07H .2201 PURPOSE**

8 ~~A general permit pursuant to this Section shall allow the construction of Persons wishing to place~~ freestanding
9 moorings and bird nesting poles in the estuarine waters and public trust areas AECs ~~according to the procedures~~
10 ~~provided in 15A NCAC 07J .1100 and shall apply for a general permit~~ according to the rules in this Section. This
11 permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean
12 Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such
13 features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent
14 Ocean Erodible Area.

15
16 *History Note: Authority G.S. 113A-107; 113A-118.1;*
17 *Eff. February 1, 1996;*
18 *Amended Eff. January 1, 2018; April 1, 2003;*
19 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2202 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2202 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development pursuant to Paragraph (b) of this Rule.

6 (b) The applicant shall provide:

7 (1) information on site location, dimensions of the project area, and applicant name and address;

8 (2) a dated plat(s) showing existing and proposed development; and confirmation that a written
9 statement has been obtained signed by the adjacent riparian property owners indicating that they
10 have no objections to the proposed work; or

11 ~~(3) — evidence that:~~

12 ~~(A) — a written statement has been obtained and signed by the adjacent riparian property owners~~
13 ~~indicating that they have no objections to the proposed work; or~~

14 ~~(B) — the adjacent riparian property owners have been notified by certified mail of the proposed~~
15 ~~work. The notice shall instruct adjacent property owners to provide any comments on the~~
16 ~~proposed development in writing for consideration by permitting officials to the Division~~
17 ~~of Coastal Management within 10 calendar days of receipt of the notice, and, indicate that~~
18 ~~no response shall be interpreted as no objection. Division of Coastal Management staff~~
19 ~~shall review all comments. If the Division of Coastal Management determines that:~~

20 ~~(i) — the comments are relevant to the potential impacts of the proposed project; and~~

21 ~~(ii) — the Division of Coastal Management shall review all comments and determine,~~
22 ~~based on their relevance to the potential impacts of the proposed project, if the~~
23 ~~proposed project may be approved by a General Permit. If the Division of Coastal~~
24 ~~Management determines that the project exceeds the guidelines established by the~~
25 ~~General Permit process provided in 15A NCAC 07J .1100, the Division shall~~
26 ~~notify the applicant that an application for a major development permit shall be~~
27 ~~required.~~

28 (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
29 proposed work. The notice shall instruct adjacent property owners to provide any comments on the
30 proposed development in writing for consideration by permitting officials to the Division of Coastal
31 Management within 10 days of receipt of the notice and indicate that no response will be interpreted
32 as no objection. Division staff shall review all comments and determine, based on their relevance to
33 the potential impacts of the proposed project, if the proposed project can be approved by a General
34 Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division
35 shall notify the applicant that he or she must submit an application for a major development permit.

36 (c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the
37 applicant shall be provided a copy the rules of this Section. Construction authorized by this permit shall be completed

1 ~~within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or~~
2 ~~continue construction. No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal~~
3 ~~Management representative to review the proposed development. A permit to proceed with the proposed development~~
4 ~~shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter.~~
5 ~~Construction shall be completed within 120 days of the issuance of the general permit or the authorization shall expire~~
6 ~~and it shall be necessary to re-examine the proposed development to determine if the general permit may be reissued.~~
7 ~~(d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal~~
8 ~~Management.~~

9
10 *History Note: Authority G.S. 113A-107; 113A-118.1;*
11 *Eff. February 1, 1996;*
12 *Amended Eff. January 1, 2018; August 1, 2007;*
13 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2204 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2204 GENERAL CONDITIONS**

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

7 (b) A "bird nesting pole" is any pole or piling erected, with a platform on top, for the purpose of attracting birds for
8 nesting.

9 (c) Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian
10 landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or any other
11 commercial services.

12 (d) ~~There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of~~
13 ~~freestanding~~ Freestanding moorings or bird nesting ~~pole poles~~ authorized by this ~~permit~~. Freestanding moorings or bird nesting poles authorized by this permit shall not interfere
14 with navigation or use of the waters by the public.

15 (e) This general permit may not be applicable to proposed construction when the Department determines that the
16 ~~proposal might affect the quality of the human environment or endanger adjoining properties. In those cases, individual~~
17 ~~permit applications and review of the proposed project shall be required according to 15A NCAC 07J. proposed~~
18 activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation
19 values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

20 (f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, State, federal,
21 and local requirements. and local land use plans current at the time of authorization.

22 (g) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections
23 in order to be sure that the activity being performed under the authority of this general permit is in accordance with
24 the terms and conditions prescribed herein.

25
26 *History Note: Authority G.S. 113A-107; 113A-118.1;*
27 *Eff. February 1, 1996;*
28 *Amended Eff: January 1, 2018;*
29 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2301 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **SECTION .2300 - GENERAL PERMIT FOR REPLACEMENT OF EXISTING BRIDGES AND**
4 **CULVERTS IN ESTUARINE WATERS, ESTUARINE AND PUBLIC TRUST SHORELINES, PUBLIC**
5 **TRUST AREAS, AND COASTAL WETLANDS**

6
7 **15A NCAC 07H .2301 PURPOSE**

8 A general permit for replacement of person wishing to replace existing bridges and culverts in estuarine waters,
9 estuarine and public trust shorelines, public trust areas, and coastal wetlands AECs, shall be obtained apply for a
10 general permit pursuant to the rules in 15A NCAC 7J .1100 and this Section Section. to replace existing bridges and
11 culverts in estuarine water, estuarine and public trust shorelines, public trust areas and coastal wetland AECs.

12
13 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
14 *Eff. June 1, 1996;*
15 *Amended Eff. August 1, 2000;*
16 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2302 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2302 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development.

6 (a)(b) The applicant shall contact the Division of Coastal Management (Division) and provide:

7 (1) information on site location, project description, and his or her name, address and telephone number;
8 applicant name and address;

9 ~~(2) a dated plat(s) showing existing and proposed development; and~~

10 ~~(3)(2) confirmation that that a written statement has been obtained signed by the adjacent riparian property~~
11 ~~owners indicating that they have no objections to the proposed work; or~~

12 ~~(A) a written statement has been obtained and signed by the adjacent riparian property owners~~
13 ~~indicating that they have no objections to the proposed work; or~~

14 ~~(B) the adjacent riparian property owners have been notified by certified mail of the proposed~~
15 ~~work. Such notice shall instruct adjacent property owners to provide any comments on the~~
16 ~~proposed development in writing for consideration by permitting officials to the Division~~
17 ~~of Coastal Management within 10 days of receipt of the notice and indicate that no response~~
18 ~~shall be interpreted as no objection. Division staff shall review all comments. If the~~
19 ~~Division determines that:~~

20 ~~(i) the comments are relevant to the potential impacts of the proposed project; and~~

21 ~~(ii) the permitting issues raised by the comments require a more detailed review, then~~
22 ~~the Division shall notify the applicant that he or she shall be required to submit an~~
23 ~~application for a major development permit.~~

24 ~~(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the~~
25 ~~proposed work. The notice shall instruct adjacent property owners to provide any comments on the~~
26 ~~proposed development in writing for consideration by permitting officials to the Division of Coastal~~
27 ~~Management within 10 days of receipt of the notice and indicate that no response will be interpreted~~
28 ~~as no objection. Division staff shall review all comments and determine, based on their relevance to~~
29 ~~the potential impacts of the proposed project, if the proposed project can be approved by a General~~
30 ~~Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division~~
31 ~~shall notify the applicant that he or she must submit an application for a major development permit.~~

32 ~~(b) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the~~
33 ~~applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within~~
34 ~~two years of permit issuance or the general authorization shall expire and a new permit shall be required to begin or~~
35 ~~continue construction. For North Carolina Department of Transportation projects identified in the Transportation~~
36 ~~Improvement Program this permit shall not expire pursuant to G.S. 136-44.7B.~~

1 (c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management
2 ~~representative. Written authorization representative to review the proposed development. A permit to proceed with~~
3 the proposed development shall be issued during this visit if the Division representative finds that the application
4 meets all the requirements of this Subchapter. Construction shall be completed within 120 days of the issuance of the
5 general permit or the authorization shall expire and it shall be necessary to re-examine the proposed development to
6 determine if the general permit may be reissued. Pursuant to G.S. 136-44.7B, permits issued to the North Carolina
7 Department of Transportation for projects identified in the Transportation Improvement Program shall not expire.

8 (d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal
9 Management.

10
11
12 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
13 *Eff. June 1, 1996;*
14 *Amended Eff. May 1, 2010;*
15 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2303 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2303 PERMIT FEE**

4 The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by inter-departmental
5 fund transfer, **check check**, or money order made payable to the Department of **Environment and Natural Resources**.
6 **Environmental Quality**.

7

8 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*

9 *Eff. June 1, 1996;*

10 *Amended Eff. May 1, 2010; September 1, 2006; August 1, 2000;*

11 *Readopted Eff. Octobert 1, 2022.*

1 15A NCAC 07H .2304 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2304 GENERAL CONDITIONS**

4 (a) Projects authorized by this permit shall be demolition, removal, and replacement of existing bridges and culverts
5 along the existing alignment and conforming to the standards in this Rule. This permit shall be applicable only to
6 single bridge and culvert projects and shall not authorize temporary fill causeways or temporary bridges that may be
7 associated with bridge replacement projects.

8 (b) The permittee shall allow authorized representatives of the Department of Environment and Natural Resources
9 Environmental Quality (Department) to make periodic inspections at any time deemed necessary in order to ensure
10 that the activity being performed under authority of this general permit is in accordance with the terms and conditions
11 prescribed in this Rule.

12 (c) This general permit shall not be applicable to proposed construction where the Department determines that
13 authorization may be warranted, but that the proposed activity might significantly affect the quality of human
14 environment or unnecessarily endanger adjoining properties. the proposed activity might have significant adverse
15 impacts.

16 (d) This general permit shall not be applicable to proposed construction where the Department determines that the
17 proposed activity would have significant adverse impacts on water quality or historic, cultural, scenic, fisheries, or
18 recreational resources.

19 (e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

20 (f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local
21 land use plans.

22 ~~(g) This permit shall not apply to projects that require work channels.~~

23 ~~(h)(g)~~ Review of individual project requests shall be coordinated with the Division of Marine Fisheries (DMF) and
24 the Wildlife Resources Commission (WRC). This may result in a construction moratorium during periods of
25 significant biological productivity or critical life stages as determined by the WRC and DMF.

26 ~~(+)(h)~~ Development under this permit shall be carried out within Department of Transportation (DOT) right-of-ways
27 or on lands under the ownership of the applicant in the case of a non-DOT project.

28 ~~(+)(i)~~ Bridge and culvert replacements shall be designed to minimize any adverse impacts to potential navigation or
29 use of the waters by the public.

30 ~~(+)(j)~~ This permit shall apply only to projects involving replacement of bridges and culverts currently serving their
31 intended function.

32
33 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*

34 *Eff. June 1, 1996;*

35 *Amended Eff. May 1, 2010;*

36 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .2305 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2305 SPECIFIC CONDITIONS**

4 (a) This general permit is applicable to bridge replacement projects spanning no more than 400 feet of estuarine water,
5 public trust area, and coastal wetland AECs.

6 (b) Existing roadway deck width shall not be expanded to create additional lanes, with the exception that an existing
7 one lane bridge may be expanded to two lanes where the Department of Environment and Natural Resources
8 Environmental Quality determines that authorization is warranted and provided the proposed project does not
9 significantly affect the quality of the human and natural environment or unnecessarily endangers adjoining properties.
10 create significant adverse environmental impacts.

11 (c) Replacement of existing bridges with new bridges shall not reduce vertical or horizontal navigational clearances.

12 (d) All demolition debris shall be disposed of landward of all wetlands and the normal water level (NWL) or normal
13 high water (NHW) level ~~(as as~~ defined in 15A NCAC 07H .0106), 15A NCAC 07H .0106, and shall employ soil
14 stabilization measures to prevent entry of sediments in the adjacent water bodies or wetlands.

15 (e) Bridges and culverts shall be designed to allow passage of anticipated high water flows.

16 (f) Measures sufficient to restrain sedimentation and erosion shall be implemented at each site.

17 (g) Bridge or culvert replacement activities involving excavation or fill in wetlands, public trust areas, and estuarine
18 waters shall meet the following conditions:

- 19 (1) Replacing bridges with culverts shall not be allowed in primary nursery areas as defined by the
20 Marine Fisheries or Wildlife Resources Commissions.
- 21 (2) The total area of public trust area, estuarine waters, and wetlands to be excavated or filled shall not
22 exceed 2,500 square feet except that the coastal wetland component shall not exceed 750 square
23 feet.
- 24 (3) Culverts shall not be used to replace bridges with open water spans greater than 50 feet.
- 25 (4) There shall be no temporary placement or double handling of excavated or fill materials within
26 waters or vegetated wetlands.
- 27 (5) No excavated or fill material shall be placed in any wetlands or surrounding waters outside of the
28 alignment of the fill area indicated on the work plat(s). plat.
- 29 (6) All excavated materials shall be confined above NWL or NHW and landward of any wetlands
30 behind dikes or other retaining structures to prevent spill-over of solids into any wetlands or
31 surrounding waters.
- 32 (7) No bridges with a clearance of four feet or greater above the NWL or NHW shall be allowed to be
33 replaced with culvert(s) culverts unless the culvert design maintains the existing water depth,
34 vertical clearance and horizontal clearance.
- 35 (8) If a bridge is being replaced by a culvert(s) culvert then the width of the waterbody shall not be
36 decreased by more than 40 percent.

1 (9) All pipe and culvert inverts placed within the Public Trust or the Estuarine Waters AECs shall be
2 buried at least one foot below normal bed elevation to allow for passage of water and aquatic life.
3 Culverts placed in wetlands are not subject to this requirement.
4

5 *History Note:* *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
6 *Eff. June 1, 1996;*
7 *Amended Eff. May 1, 2010;*
8 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2401 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **SECTION .2400 - GENERAL PERMIT FOR PLACEMENT OF RIPRAP REVETMENTS FOR WETLAND**
4 **PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS**

5
6 **15A NCAC 07H .2401 PURPOSE**

7 ~~The general permit for placement of riprap revetments for wetland protection in estuarine and public trust waters shall~~
8 ~~allow the placement of~~ Persons wishing to construct riprap revetments for wetland protection in estuarine and public
9 trust waters, immediately adjacent to and waterward of the wetland ~~tee-toe,~~ shall apply for a general permit under this
10 Section. ~~This permit shall only be applicable in public trust areas and estuarine waters according to authority provided~~
11 ~~in 15A NCAC 07J .1100 and according to the rules in this Section.~~ This permit shall not apply to oceanfront shorelines
12 or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those portions of shoreline that
13 feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave
14 energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

15
16 *History Note: Authority G.S. 113A-107; 113A-118.1;*
17 *Eff. August 1, 2000;*
18 *Amended Eff. February 1, 2009; April 1, 2003;*
19 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2402 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2402 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and the applicant's name and address.

7 (b) The applicant shall provide:

8 (1) information on site location, dimensions of the project area, and applicant name and address;

9 (+)(2) confirmation that a written statement has been obtained signed by the adjacent riparian property
10 owners indicating that they have no objections to the proposed work; or

11 (-)(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
12 proposed work. The notice shall instruct adjacent property owners to provide any comments on the
13 proposed development in writing for consideration by permitting officials to the Division of Coastal
14 Management within 10 days of receipt of the ~~notice, and,~~ notice and indicate that no response shall
15 be interpreted as no objection. The Division ~~staff of Coastal Management~~ shall review all comments
16 and determine, based on their relevance to the potential impacts of the proposed project, if the
17 proposed project can be approved by ~~the General Permit process.~~ a General Permit. If not, the
18 applicant shall be notified that an application for a major development permit shall be required. If
19 Division staff finds that the comments are worthy of more in-depth review, the Division shall notify
20 the applicant that he or she must submit an application for a major development permit.

21 (c) No work shall begin until an on site meeting is held with the applicant and a Division of Coastal Management
22 representative so that the structure location can be marked. Written authorization to proceed with the proposed
23 development shall be issued during this visit. Construction of the structure shall be completed within 120 days of the
24 issuance of the permit or the general authorization expires and it shall be necessary to re-examine the alignment to
25 determine if the general authorization may be reissued. ~~No work shall begin until an on-site meeting is held with the~~
26 applicant and a Division of Coastal Management representative to review the proposed development. A permit to
27 proceed with the proposed development shall be issued if the Division representative finds that the application meets
28 all the requirements of this Subchapter. Construction shall be completed within 120 days of the issuance of the general
29 permit or the authorization shall expire and it shall be necessary to re-examine the proposed development to determine
30 if the general permit may be reissued.

31 (d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal
32 Management.

33
34
35 *History Note: Authority G.S. 113A-107; 113A-118.1;*
36 *Eff. August 1, 2000;*
37 *Amended Eff. February 1, 2009; October 1, 2007;*

1 15A NCAC 07H .2403 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2403 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. August 1, 2000;*

9 *Amended Eff. September 1, 2006;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2404 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2404 GENERAL CONDITIONS**

4 (a) This permit authorizes only the construction of wetland protection structures conforming to the standards herein.

5 (b) Individuals shall allow authorized representatives of the Department of **Environment and Natural Resources**
6 **Environmental Quality** to make periodic inspections at any time deemed necessary in order to ensure that the activity
7 being performed under authority of this general permit is in accordance with the terms and conditions prescribed
8 herein.

9 (c) The placement of riprap revetments authorized in this Rule shall not interfere with the established or traditional
10 rights of navigation of the waters by the public.

11 (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has
12 determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
13 necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or
14 on **water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust**
15 **rights, water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust**
16 **rights.**

17 (e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

18 (f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and
19 local land use plans current at the time of authorization.

20

21 *History Note: Authority G.S. 113A-107; 113A-118.1;*

22 *Eff. August 1, 2000;*

23 *Amended Eff. February 1, 2009;*

24 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2405 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2405 SPECIFIC CONDITIONS**

4 (a) This general permit shall only be applicable along shorelines possessing wetlands, which exhibit an identifiable
5 escarpment.

6 (b) The structure shall be constructed of granite, marl, riprap, concrete without exposed rebar, or other suitable
7 equivalent materials approved by the Division of Coastal Management.

8 (c) The height of the erosion escarpment shall not exceed three feet.

9 (d) The riprap shall be placed immediately waterward of the erosion escarpment.

10 (e) The riprap revetment shall be positioned so as not to exceed a maximum of six feet waterward of the erosion
11 escarpment at any point along its alignment with a slope no flatter than three feet horizontal per one foot vertical and
12 no steeper than one and one half feet horizontal per one foot vertical.

13 (f) The riprap shall be positioned so as not to exceed a maximum of six inches above the elevation of the adjacent
14 wetland substrate or escarpment.

15 ~~(g) Where the Division of Coastal Management determines that insufficient wetland vegetation exists along the~~
16 ~~permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate~~
17 ~~wetland vegetation landward of the riprap revetment as directed by the Division of Coastal Management.~~

18 ~~(h)~~(g) Construction authorized by this general permit will be limited to a maximum length of 500 feet.

19 ~~(i)~~(h) No backfill or any other fill of wetlands, submerged aquatic vegetation, estuarine waters, public trust areas, or
20 highground areas is authorized by this general permit.

21 ~~(j)~~(i) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

22 ~~(k)~~(j) Riprap material used for revetment construction shall be free from loose dirt or any pollutant and be of a size
23 sufficient to prevent its movement from the site by wave action or currents.

24 ~~(l)~~(k) If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, temporary
25 construction mats shall be utilized for the **area(s)area** to be crossed. The temporary mats shall be removed immediately
26 upon completion of construction of the riprap structure.

27 ~~(m)~~(l) The permittee shall maintain the structure in good condition and in conformance with the terms and conditions
28 of this permit or the remaining riprap revetment shall be removed within 90 days of notification from the Division of
29 Coastal Management.

30
31 *History Note: Authority G.S. 113A-107; 113A-118.1;*

32 *Eff. August 1, 2000;*

33 *Amended Eff. February 1, 2009;*

34 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2601 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION OF MITIGATION BANKS AND IN-LIEU**
4 **FEE MITIGATION PROJECTS**

5
6 **15A NCAC 07H .2601 PURPOSE**

7 ~~The general permit in this Section shall allow for the construction of Persons seeking to construct~~ mitigation banks
8 and in-lieu fee mitigation ~~projects.~~ projects shall apply for a general permit according to the rules in this Section. This
9 permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services.
10 These activities include:

- 11 (1) restoration;
12 (2) enhancement;
13 (3) establishment of tidal and non-tidal wetlands and riparian areas;
14 (4) restoration and enhancement of non-tidal streams and other non-tidal open waters; and
15 (5) rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters.

16 This permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters
17 adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature
18 characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy,
19 and lower erosion rates than in the adjoining Ocean Erodible Area.

20
21 *History Note: Authority G.S. 113A-107; 113A-118.1;*
22 *Eff. October 1, 2004;*
23 *Amended Eff. October 1, 2014;*
24 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2602 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2602 APPROVAL PROCEDURES**

4 (a) The applicant shall contact the Division of Coastal Management and request approval for development. The
5 applicant shall provide information in writing on site location, a mitigation plan outlining the proposed mitigation
6 activities, and the applicant's name and address.

7 (b) The applicant shall ~~provide either confirmation that a written statement has been obtained and signed by the~~
8 ~~adjacent riparian property owners indicating that they have no objections to the proposed work, or confirmation that~~
9 ~~the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notices shall~~
10 ~~instruct adjacent property owners to provide any comments on the proposed development in writing for consideration~~
11 ~~to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response shall be~~
12 ~~interpreted as no objection.] provide:~~

13 (1) information on site location, dimensions of the project area, and applicant name and address;

14 (2) confirmation [that:] that a written statement has been obtained signed by the adjacent riparian
15 property owners indicating that they have no objections to the proposed work; or

16 (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the
17 proposed work. The notice shall instruct adjacent property owners to provide any comments on the
18 proposed development in writing for consideration by permitting officials to the Division of Coastal
19 Management within 10 days of receipt of the notice and indicate that no response will be interpreted
20 as no objection. Division staff shall review all comments and determine, based on their relevance to
21 the potential impacts of the proposed project, if the proposed project can be approved by a General
22 Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division
23 shall notify the applicant that he or she must submit an application for a major development permit.

24 ~~(c) The Division of Coastal Management shall review all comments received from adjacent property owners and~~
25 ~~determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the~~
26 ~~requirements of the rules in this Section.~~

27 ~~(d)(c)~~ No work shall begin until a meeting is held with the applicant and ~~the a~~ Division of Coastal Management
28 representative to review the proposed development, and written authorization to proceed with the proposed
29 development is issued in compliance with this Rule. A permit to proceed with the proposed development shall be
30 issued if the Division representative finds that the application meets all the requirements of this Subchapter.

31 Construction of the mitigation site shall start within 365 days of the issue date of the general permit or the general
32 permit shall expire and it shall be necessary to re-examine the proposed development for any changes to determine if
33 the general permit shall be reissued.

34 (d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal
35 Management.

36
37 *History Note: Authority G.S. 113A-107; 113A-118.1;*

- 1 *Eff. October 1, 2004;*
- 2 *Amended Eff. October 1, 2014;*
- 3 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2603 is readopted as published **with changes** in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2603 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Eff. October 1, 2004;*

9 *Amended Eff. September 1, 2006;*

10 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2604 is readopted as published with changes in 34:09 NCR 760 as follows:

2

3 **15A NCAC 07H .2604 GENERAL CONDITIONS**

4 (a) The permit in this Section authorizes only those activities associated with the construction of mitigation banks and
5 in-lieu fee mitigation projects.

6 (b) Individuals shall allow representatives of the Department of ~~Environment and Natural Resources~~ Environmental
7 Quality to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed
8 under authority of this general permit is in accordance with the terms and conditions of the rules of this Section.

9 (c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the
10 permittee to prevent the use by the public of all navigable waters at or adjacent to the development authorized pursuant
11 to the rules of this Section.

12 (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has
13 determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
14 necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or
15 on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust
16 rights.

17 (e) At the discretion of the Division of Coastal Management, review of individual project requests shall be coordinated
18 with the Department of ~~Environment and Natural Resources~~ Environmental Quality to determine if a construction
19 moratorium during periods of significant biological productivity or critical life stages of fisheries resources is
20 necessary to protect those resources.

21 (f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

22 (g) Development carried out under this permit shall be consistent with all local rules, regulations, laws, or land use
23 plans of the local government in which the development takes place.

24

25 *History Note: Authority G.S. 113A-107; 113A-118.1;*

26 *Eff. October 1, 2004;*

27 *Amended Eff. October 1, 2014;*

28 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2605 is readopted as published with changes in 34:09 NCR 760 as follows:

2
3 **15A NCAC 07H .2605 SPECIFIC CONDITIONS**

4 (a) The general permit in this Section shall be applicable only for the construction of mitigation banks or in-lieu fee
5 mitigation projects.

6 (b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.

7 (c) The crossing of wetlands in transporting equipment shall be avoided or minimized to the maximum extent
8 practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary,
9 track and low-pressure low-pressure equipment or temporary construction mats shall be utilized for the area(s)area to
10 be crossed. The temporary mats shall be removed immediately upon completion of construction.

11 (d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control
12 structures, or those structures needed for site monitoring or shoreline stabilization.

13 (e) This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for
14 any particular project. The use of any portion of the site as compensatory mitigation for future projects shall be
15 determined in accordance with applicable regulatory policies and procedures.

16 (f) The development authorized pursuant to this general permit shall result in a net increase in coastal resource
17 functions and values.

18 (g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state through
19 conservation easement, deed restriction restriction, or other appropriate instrument attached to the title for the subject
20 property and shall be owned by the permittee or its designee.

21 (h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared by the permittee
22 or its designee for the authorized mitigation bank or in-lieu fee project site.

23 (i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the
24 likelihood of flooding any adjacent property.

25 (j) Appropriate sedimentation and erosion control devices, measures measures, or structures such as silt fences,
26 diversion swales or berms, and sand fences, etc. fences shall be implemented to ensure that eroded materials do not
27 enter adjacent wetlands, watercourses watercourses, and property.

28 (k) If one or more contiguous acre of property is to be graded, excavated excavated, or filled, the applicant shall
29 submit an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land
30 Quality Section. The plan shall be approved prior to commencing the land-disturbing activity.

31 (l) All fill material shall be free of any pollutants, except in trace quantities.

32
33 *History Note: Authority G.S. 113A-107; 113A-118.1;*

34 *Eff. October 1, 2004;*

35 *Amended Eff. October 1, 2014; August 1, 2012 (see S.L. 2012-143, s.1.(f));*

36 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2701 is readopted as published **with changes** in 34:09 NCR 761 as follows:

2
3 **SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF MARSH SILLS**

4
5 **15A NCAC 07H .2701 PURPOSE**

6 ~~A general permit under this Section shall allow for the construction of~~ **Persons seeking to construct** marsh sills for
7 wetland enhancement and shoreline stabilization in estuarine and public trust waters **shall apply for a general permit**
8 ~~as set out in 15A NCAC 07J .1100 and~~ according to the rules in this Section. Marsh sills are defined as sills that are
9 shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not
10 apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions
11 of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features
12 include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean
13 Erodible Area.

14
15 *History Note: Authority G.S. 113A-107; 113A-118.1;*
16 *Temporary Adoption Eff. June 15, 2004;*
17 *Eff. April 1, 2005;*
18 *Temporary Amendment Eff. April 1, 2019;*
19 *Amended Eff. July 1, 2019;*
20 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2702 is readopted as published with changes in 34:09 NCR 761 as follows:

2
3 **15A NCAC 07H .2702 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and applicant name and address.

7 (b) The applicant shall provide:

8 (1) information on site location, dimensions of the project area, and applicant name and address; and

9 (1)(2) confirmation that an original or copy of a written statement has been obtained signed by the adjacent
10 riparian property owners indicating that they have no objections to the proposed work; or

11 (2)(3) confirmation evidence that the adjacent riparian property owners have been notified by certified
12 mail of the proposed work. The notice shall instruct adjacent property owners to provide any
13 comments on the proposed development in writing for consideration by permitting officials to the
14 Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no
15 response will be interpreted as no objection.

16 (c) DCM Division staff shall review all comments and determine, based on their relevance to the potential impacts of
17 the proposed project, if the proposed project can be approved by determine whether the project meets the standards
18 within this Rule to qualify for a General Permit.

19 (d) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
20 representative to review the proposed development. Written authorization A permit to proceed with the proposed
21 development shall be issued if the Division representative finds that the application meets all the requirements of this
22 Subchapter. Construction shall be completed within 120 days of the issuance of the general authorization permit or
23 the authorization permit shall expire and it shall be necessary to the Division shall have to re-examine the proposed
24 development to determine if the general authorization may be reissued, it may reissue the permit.

25
26 *History Note: Authority G.S. 113A-107; 113A-118.1;*
27 *Temporary Adoption Eff. June 15, 2004;*
28 *Eff. April 1, 2005;*
29 *Amended Eff. October 1, 2007;*
30 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2703 is readopted as published **with changes** in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07H .2703 PERMIT FEE**

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

6

7 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*

8 *Temporary Adoption Eff. June 15, 2004;*

9 *Eff. April 1, 2005;*

10 *Amended Eff. September 1, 2006;*

11 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2704 is readopted as published with changes in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07H .2704 GENERAL CONDITIONS**

4 ~~(a) Structures authorized by a permit issued pursuant to this Section shall be marsh sills conforming to these Rules.~~

5 ~~(b)(a)~~ Individuals shall allow authorized representatives of the Department of Environmental Quality (DEQ) to make
6 periodic inspections at any time deemed necessary in order to ensure that the activity being performed under authority
7 of this general permit is in accordance with the terms and conditions prescribed in these Rules.

8 ~~(c)(b)~~ The placement of marsh sills authorized in these Rules shall not interfere with the established or traditional
9 rights of navigation of the waters by the public.

10 ~~(d)(c)~~ This permit shall not be applicable to proposed construction where the Department has determined, based on
11 an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are
12 unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality,
13 coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

14 ~~(e)(d)~~ This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

15 ~~(f)(e)~~ Development carried out under this permit shall be consistent with all state, federal, local requirements, AEC
16 Guidelines as set out in 15A NCAC 07H .0200, and local land use plans current at the time of authorization.

17

18 *History Note: Authority G.S. 113A-107; 113A-118.1;*
19 *Temporary Adoption Eff. June 15, 2004;*
20 *Eff. April 1, 2005;*
21 *Temporary Amendment Eff. April 1, 2019;*
22 *Amended Eff. July 1, 2019;*
23 *Readopted Eff. October 1, 2022.*

1 15A NCAC 07H .2705 is readopted as published **with changes** in 34:09 NCR 761 as follows:

2
3 **15A NCAC 07H .2705 SPECIFIC CONDITIONS**

4 (a) A general permit issued pursuant to this Section shall be applicable only for the construction of marsh sill structures
5 built in conjunction with existing, created, or restored wetlands. Planted wetland vegetation shall consist only of native
6 species.

7 (b) The landward edge of the sill shall be positioned no greater than 30 feet waterward of the normal high water or
8 normal water level or five feet waterward of the existing wetlands, whichever distance is greater.

9 (c) The permittee shall maintain the authorized sill, including wetlands and tidal inundation, in conformance with the
10 terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification of
11 noncompliance from the Division of Coastal Management.

12 (d) The height of sills shall not exceed 12 inches above normal high water, normal water level, or the height of the
13 adjacent wetland substrate, whichever is higher.

14 (e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

15 (f) The sills shall have at least one five-foot opening every 100 feet and may be staggered, overlapped or left open as
16 long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap more than 10
17 feet. **Deviation from these opening requirements shall be allowable following coordination with the N.C. Division of**
18 **Coastal Management.**

19 (g) The sill structure shall not exceed a slope of a one and a half foot horizontal distance over a one foot vertical rise.
20 The width of the structure on the bottom shall not exceed 12 feet.

21 (h) For water bodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one
22 sixth (1/6) the width of the waterbody.

23 (i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal
24 agency.

25 (j) The sill shall not interfere with leases or franchises for shellfish culture.

26 (k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent
27 property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent
28 property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more
29 than 25 feet from the normal high or normal water level. The riparian access corridor line is determined by drawing a
30 line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the
31 point where the upland property line meets the water's edge, as **defined illustrated** in 15A NCAC 07H .1205(t).
32 Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including
33 access to navigation channels from piers, or other means of access.

34 (l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above normal high
35 water or normal water level and **must shall** be maintained for the life of the structure.

36 (m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats
37 shall be utilized for the areas to be crossed. The temporary mats shall be removed upon completion of the construction

1 of the sill structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water
2 unless contained in a containment structure supported by construction mats.

3 (n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter
4 adjacent wetlands or waters.

5 (o) No excavation or filling, other than that necessary for the construction and bedding of the sill structure, is
6 authorized by this general permit.

7 (p) Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is
8 present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of
9 April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic
10 vegetation.

11 (q) Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a
12 minimum setback of 10 feet from any oysters, oyster beds, or shell banks.

13 (r) No excavation of the shallow water bottom or any wetland is authorized by this general permit.

14 (s) The sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken
15 concrete, or other similar materials that are approved by the N.C. Division of Coastal Management. Sill material shall
16 be free of loose sediment or ~~any pollutant, including~~ exposed rebar. The sill material shall be of sufficient size and
17 slope to prevent its movement from the approved alignment by wave or current action.

18

19 *History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-118.1;*
20 *Temporary Adoption Eff. June 15, 2004;*
21 *Eff. April 1, 2005;*
22 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));*
23 *Temporary Amendment Eff. April 1, 2019;*
24 *Amended Eff. July 1, 2019;*
25 *Readopted Eff. October 1, 2022.*

Burgos, Alexander N

Subject: FW: Request for Changes to 15A NCAC 07H .1805

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Tuesday, August 16, 2022 3:58 PM

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

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

Subject: RE: Request for Changes to 15A NCAC 07H .1805

Jennifer,

I am recommending approval of 07H .1805.

Thanks,

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

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Burgos, Alexander N

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

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

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

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

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

Subject: RE: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Hi Bill,

That is correct. We continue to work on the technical change requests. The only rule we submitted for next week's meeting was 15A NCAC 07H .1805.

Jennifer

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, August 11, 2022 10:40 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>

Subject: RE: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Good morning,

As we have not heard from agency nor received any further submissions, we will inform the RRC that the agency needs additional time to respond. The above captioned rules will be reviewed at the September 2022 Rule Review Commission meeting. Responses to the Requests of Changes and revised rules, if any, should be submitted no later than 5:00 pm, Thursday September 1, 2022.

As always, if you have any questions or concerns, please do not hesitate to contact us.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: RRC Extension Letter - 15A 07H, 07I, 07J, 07M
Attachments: 07.2022 CRC Extension Letter.pdf

From: Liebman, Brian R
Sent: Thursday, July 21, 2022 4:23 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>
Subject: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Good afternoon,

Attached, please find a letter of extension for the above captioned rules. Please let me know if you have any questions or concerns.

Thank you,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 15A NCAC 07H, 07I, and 07J Change Requests and Additional Staff Opinions
Attachments: 2022.7 - CRC 07H, I , J Request for Change .docx; 07.2022 - CRC 07I .0406 Staff Opinion.doc; 07.2022 - CRC 07I .0504 Staff Opinion.doc

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, July 14, 2022 4:31 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 15A NCAC 07H, 07I, and 07J Change Requests and Additional Staff Opinions

Hi Jennifer,

Attached, please find a copy of my change requests for any rule not subject to a staff opinion. I've not set a due date in the document, as we usually would, since you've already requested an extension. Once the Commission rules on your request, we'll work out a due date for responses.

Further, I've attached copies of staff opinions recommending objection to Rules 07I .0406 and .0504.

Please let me know if you have any questions, concerns, etc.

Thanks!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

From: Liebman, Brian R
Sent: Friday, July 8, 2022 3:52 PM
To: Everett, Jennifer; Rules, Oah
Cc: Lopazanski, Mike; Burgos, Alexander N; Lucasse, Mary L; Goebel, Christine A; Willis, Angela; Wright, Alyssa N
Subject: RE: 15A NCAC 07H, 07I, and 07J Staff Opinions

Hi Jennifer,

Thank you for letting me know. I will recommend that RRC approve your request at the upcoming meeting.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Friday, July 8, 2022 3:39 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: 15A NCAC 07H, 07I, and 07J Staff Opinions

Hello,

We are kindly requesting an extension for the period of review for 15A NCAC 07H, 07I and 07J. This extension will allow staff additional time to address your technical change requests.

Thank you.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, July 7, 2022 6:03 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 15A NCAC 07H, 07I, and 07J Staff Opinions

Good afternoon,

I'm the attorney who reviewed Section .0500 and .0600 of Subchapter 07H, and Subchapters 07I and 07J of the rules submitted by CRC for the July 2022 RRC meeting. After review, I have issued the attached staff opinions. Additionally, I've attached a staff opinion co-signed by Bill Peaslee and I that covers several rules across subchapters 07H and 07M for which we identified the same issue.

For the Rules I have reviewed that are not subject to staff opinion, I will be issuing requests for changes within the next few days.

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

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