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**To: NC Division of Coastal Management
C/O Dr. Braxton Davis, Director
400 Commerce Avenue
Morehead City, NC 28557**

Subject: Petition for Rulemaking Pursuant to NCGS 150B-20

**Title: Request to Repeal Coastal Resources Commission Rule
15 NCAC 7H .0205 (e) Alteration of Coastal Wetlands**

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:
(1) either a draft of the proposed rule or a summary of contents;**

Response: This petition is to request the repeal of the subject rule outlined in 15 NCAC 7H .0205 (e) governing the "mowing" and "cutting" of marsh grass in the Coastal Wetland Area of Environmental Concern.

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:
(2) a statement of reasons for adoption of the proposed rule(s);**

Response: The rule being petitioned for repeal states the following:

“(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

- (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;*
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;*
 - (C) Alteration of the substrate is not allowed;*
 - (D) All cuttings or clippings shall remain in place as they fall;*
 - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and*
 - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.**
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have a significant adverse impact on the habitat or fisheries resources.”*

The definition of “Development” in the Coastal Area Management Act is outlined in NCGS 113A-103 (5) a.:

“ ‘Development’ means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).”

No authority is granted to the Coastal Resources Commission under the Coastal Area Management Act to regulate “mowing” and/or “cutting”, as neither activity is listed as “Development” in the enabling legislation. Because “mowing” and/or “cutting” are not “Development” as indicated under the Coastal Area Management Act, the activities described herein are clearly outside the legislative authority and jurisdiction of the Coastal Resources Commission.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(3) a statement of effect on existing rules or orders;

Response: Being that this rule was adopted in error it compromises the integrity and diminishes the authority of other rules lawfully adopted and administered by the Coastal Resources Commission.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(4) any data in support of the proposed rule(s);

Response: See item (2) above.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(5) a statement of the effect of the proposed rule on existing practices;

Response: Repeal of this rule will result in the reallocation of resources into other activities pursuant to the proper implementation of the legislative intent of the Coastal Area Management Act.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(6) the name and address of the petitioner.

Response: Nelson G. Paul, Petitioner
307 Misty Grove Circle
Morrisville, NC 27560

