

Burgos, Alexander N

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

From: Goebel, Christine A <Christine.Goebel@deq.nc.gov>
Sent: Thursday, October 12, 2023 12:22 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>
Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

Just a correction- the CRC's meeting is actually 11/9 not 11/8. CG

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, October 12, 2023 11:25 AM
To: Lucasse, Mary L <mlucasse@ncdoj.gov>
Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

Good morning,

Yes, because the CRC is a commission, it has until 10 days after its next regularly scheduled meeting to either change the rule to satisfy the Commission's objection and submit the revised rule to the Commission, or submit a written response indicating that the agency has decided not to change the rule.

If the CRC's next regularly scheduled meeting is on November 8, I will expect its response to the Commission's objections by November 18, 2023.

Since the time to respond has not expired, I anticipate this will be a no-action item at the October meeting.

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

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, October 12, 2023 11:25 AM

To: Lucasse, Mary L <mlucasse@ncdoj.gov>

Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

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

Good morning,

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If the CRC's next regularly scheduled meeting is on November 8, I will expect its response to the Commission's objections by November 18, 2023.

Since the time to respond has not expired, I anticipate this will be a no-action item at the October meeting.

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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From: Lucasse, Mary <MLucasse@ncdoj.gov>

Sent: Wednesday, October 11, 2023 11:50 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

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

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Hi Brian,

Please confirm that under 150B-21.12(b) the CRC has until 10 days after its regularly scheduled Nov 8, 2023 meeting to respond to your August 21, 2023 letter forwarding the RRC's objections to these 3 rules. Accordingly, please confirm that I am correct that these three rules will not be considered by the RRC at its October 19, 2023 meeting.

Please include Phillip Reynolds on your response to this email (copied here) as I will be out on leave and unable to attend the October 19, 2023 meeting. Thank you. ~ Mary



Mary L. Lucasse (she/her)
Special Deputy Attorney General
NCDOJ - Environmental Division
PO Box 629
Raleigh, NC 27602
Direct: 919.716.6962
mlucasse@ncdoj.gov
www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Thursday, October 5, 2023 1:53 PM
To: Snyder, Ashley B; Liebman, Brian R; Peaslee, William W; Burgos, Alexander N
Cc: Everett, Jennifer
Subject: [External] Coastal Resources Commission

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I am the counsel for the CRC. Please include me on any correspondence regarding that Commission's rules. Thank you. ~ Mary



Mary L. Lucasse (she/her)
Special Deputy Attorney General
NCDOJ - Environmental Division
PO Box 629
Raleigh, NC 27602
Direct: 919.716.6962
mlucasse@ncdoj.gov
www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

Subject: FW: 15A NCAC 07H, I, J, M - Return Letter
Attachments: 15A NCAC 07H .0501.docx; 15A NCAC 07H .0502.docx; 15A NCAC 07H .0503.docx; 15A NCAC 07H .0505.docx; 15A NCAC 07H .0506.docx; 15A NCAC 07H .0507.docx; 15A NCAC 07H .0508.docx; 15A NCAC 07H .0509.docx; 15A NCAC 07H .0510.docx; 15A NCAC 07H .2305.docx; 15A NCAC 07I .0406.docx; 15A NCAC 07I .0506.docx; 15A NCAC 07I .0702.docx; 15A NCAC 07J .0203.docx; 15A NCAC 07J .0204.docx; 15A NCAC 07J .0206.docx; 15A NCAC 07J .0207.docx; 15A NCAC 07J .0208.docx; 15A NCAC 07J .0312.docx; 15A NCAC 07M .0201.docx; 15A NCAC 07M .0202.docx; 15A NCAC 07M .0401.docx; 15A NCAC 07M .0402.docx; 15A NCAC 07M .0403.docx; 15A NCAC 07M .0701.docx; 15A NCAC 07M .0703.docx; 15A NCAC 07M .0704.docx; 15A NCAC 07M .1001.docx; 15A NCAC 07M .1002.docx; 15A NCAC 07M .1101.docx

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Thursday, October 5, 2023 12:17 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: RE: 15A NCAC 07H, I, J, M - Return Letter

Jennifer,

See attached proofs reflecting the return of the CRC's readoptions. We are working on pushing the changes to the Code now.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

15A NCAC 07H .0501 GENERAL

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4e) to (b)(4g); 113A-124;*
Eff. September 9, 1977;
Amended Eff. June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0502 SIGNIFICANCE

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4g); 113A-124;*
 Eff. September 9, 1977;
 Amended Eff. June 1, 1979;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0503 NOMINATION AND DESIGNATION PROCEDURES

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e,f,g, and h; 113A-124;*
 Eff. September 9, 1977;
 Amended Eff. June 1, 2005; May 1, 1988; May 1, 1985; February 1, 1982; June 1, 1979;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0505 COASTAL AREAS THAT SUSTAIN REMNANT SPECIES

History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)f; 113A-124;
Eff. September 9, 1977;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0506 COASTAL COMPLEX NATURAL AREAS

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e; 113A-24;*
Eff. September 9, 1977;
Amended Eff. October 1, 1988; February 1, 1982;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;*
Eff. September 9, 1977;
Amended Eff. March 1, 1988;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0508 USE STANDARDS

History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;
Eff. September 9, 1977;
Amended Eff. February 1, 1982; June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
Eff. June 1, 1979;
Amended Eff. October 1, 1988; January 1, 1985;
RRC September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .0510 SIGNIFICANT COASTAL HISTORIC ARCHITECTURAL RESOURCES

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
Eff. June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07H .2305 SPECIFIC CONDITIONS

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
Eff. June 1, 1996;
Amended Eff. May 1, 2010.
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07I .0406 APPLICATION FEES

History Note: *Authority G.S. 113A-112; 113A-119; 113A-124;*
Eff. December 10, 1977;
Amended Eff. July 1, 2013; October 1, 1982; May 20, 1980; August 1, 1978;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07I .0506 ALLOCATION OF AUTHORITY

History Note: *Authority G.S. 113A-117(b); 113A-124(c)(5);*
 Eff. November 1, 1984;
 Amended Eff. June 1, 2006; May 1, 1990;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07I .0702 WHEN AN ACTION EXCEEDS THE LOCAL AUTHORITY

History Note: *Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5);*
 Eff. November 1, 1984;
 RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07J .0203 PREPARATION OF WORK PLATS

History Note: *Authority G.S. 113A-119; 113A-124;*
 Eff. March 15, 1978;
 Amended Eff. July 1, 1989;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07J .0204 PROCESSING THE APPLICATION

History Note: *Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;*
Eff. March 15, 1978;
Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;
Temporary Amendment Eff. September 2, 1998;
Temporary Amendment Expired June 28, 1999;
Amended Eff. August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07J .0206 PUBLIC NOTICE OF THE PROPOSED DEVELOPMENT

History Note: *Authority G.S. 113A-119(b);*
 Eff. March 15, 1978;
 Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

**15A NCAC 07J .0207 AGENCY REVIEW/COMMENTS: MAJOR DEVELOPMENT/DREDGE AND
FILL**

History Note: *Authority G.S. 113-229; 113A-124(a)(1);
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07J .0208 PERMIT CONDITIONS

History Note: *Authority G.S. 113A-120(b); 113A-124(a)(1); 113A-124(c)(5);*
Eff. March 15, 1978;
Amended Eff. March 1, 1985; November 1, 1984;
RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07J .0312 SETTLEMENT

History Note: Authority G.S. 113A-120; 113A-122; 113A-124;
Eff. April 1, 1987;
Amended Eff. July 1, 1989; October 1, 1988;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

SECTION .0200 - SHORELINE EROSION POLICIES

15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1979;
RRC Objection due to lack of necessity Eff. October 17, 1991;
Amended Eff. March 1, 1992;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07M .0202 POLICY STATEMENTS

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1979;
Amended Eff. March 1, 1985;
RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;
Amended Eff. May 4, 1995;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

SECTION .0400 - COASTAL ENERGY POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-124;*
 Eff. March 1, 1979;
 Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;
 Amended Eff. February 1, 2011; August 1, 2000;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07M .0402 DEFINITIONS

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-124;*
 Eff. March 1, 1979;
 Amended Eff. October 1, 1988;
 Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;
 Amended Eff. March 1, 2011; August 1, 2000;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07M .0403 POLICY STATEMENTS

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-124;*
Eff. March 1, 1979;
Amended Eff. April 1, 1992;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

SECTION .0700 - MITIGATION POLICY

15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
 Eff. January 1, 1984;
 Amended Eff. September 1, 1985;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07M .0703 MITIGATION CANDIDACY

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
 Eff. January 1, 1984;
 Amended Eff. September 1, 1985;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07M .0704 POLICY STATEMENTS

History Note: *Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
 Eff. January 1, 1984;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

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

15A NCAC 07M .1001 DECLARATION OF GENERAL POLICY

*History Note: Authority G.S. 113A-102(b); 113A-107;
 Eff. March 1, 1990.
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07M .1002 POLICY STATEMENTS

History Note: *Authority G.S. 113A-102(b); 113A-107;*
 Eff. March 1, 1990;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

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

15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY

History Note: *Authority G.S. 113A-107;*
 Eff. October 1, 1992;
 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

Burgos, Alexander N

From: Liebman, Brian R
Sent: Thursday, October 5, 2023 11:36 AM
To: Everett, Jennifer
Cc: Snyder, Ashley B; Burgos, Alexander N; Peaslee, William W
Subject: 15A NCAC 07H, I, J, M - Return Letter
Attachments: 10.05.2023 Coastal Resources Commission Return Letter 07H, I, J, M.pdf

Good morning,

Attached, please find a letter formally returning the CRC's rules pursuant to S.L. 2023-134, s. 21.2.(m).

Please let me know if you have any further questions or concerns.

Best,
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: [External] RE: RRC October 2023 Special Meeting - Staff Opinion - 15A NCAC 07H, I, J, and M

From: Lucasse, Mary <MLucasse@ncdoj.gov>

Sent: Tuesday, October 3, 2023 1:58 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] RE: RRC October 2023 Special Meeting - Staff Opinion - 15A NCAC 07H, I, J, and M

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Received. ~ Mary

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Tuesday, October 3, 2023 1:52 PM

To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Lucasse, Mary <MLucasse@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RRC October 2023 Special Meeting - Staff Opinion - 15A NCAC 07H, I, J, and M

Good afternoon,

Attached please find a staff opinion concerning the above captioned rules from the Coastal Resources Commission which will be considered at the RRC Special meeting Thursday, October 5, 2023.

If you have any questions or concerns, please do not hesitate to contact me.

Best,
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: RRC Objections

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Thursday, August 17, 2023 2:07 PM
To: Willis, Angela <angela.willis@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RRC Objections

Good afternoon, Angela,

Are you asking whether these rules will be removed from the Code for failure to comply with the Periodic Review process? If so, I think that question is moot at this point. The rules will continue to appear on RRC's agenda until the agency either satisfies the objections or requests the rules be returned. If the agency satisfies the objections, then the rules will appear in the Code as readoptions. If the agency requests the rules be returned, then any rule with an objection to existing language will be removed from the Code. This would result from the return, not the Periodic Review process.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

Burgos, Alexander N

Subject: FW: RRC Objections

From: Willis, Angela <angela.willis@deq.nc.gov>
Sent: Wednesday, August 16, 2023 2:08 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: RRC Objections

Good afternoon Ashley,

The Division's leadership just met to discuss recent RRC objections. A question arose that I am hoping you can answer for us. During the Periodic Review process, we had several rules that received objections from the RRC. The history notes have been updated in the Code to reflect the objection. Since there is no "readoption" date in the history note due to an impasse with the RRC attorneys, have we satisfied the requirements for the readoption process? Thank you for any information you can provide. I look forward to hearing from you and I hope you have a great afternoon.

Angela

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, February 22, 2023 3:21 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N; Lucasse, Mary L
Subject: 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101
Attachments: 12.2022 - CRC 15A NCAC 07M .0703 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0201 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0202 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0401 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0402 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0403 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0701 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .0704 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .1001 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .1002 Staff Opinion.pdf; 02.2023 - CRC 15A NCAC 07M .1101 Staff Opinion.pdf; 02.2023 CRC Objection Letter 15A NCAC M.pdf

Good afternoon Jennifer.

Attached please find the written statement of the RRC's continued objection pursuant to G.S. 150B-21.12(c) to the above captioned rules.

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

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: [External] FW: follow-up

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

From: Peaslee, William W

Sent: Wednesday, February 22, 2023 11:28 AM

To: Lucasse, Mary <MLucasse@ncdoj.gov>

Cc: Liebman, Brian R <brian.liebman@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: RE: [External] FW: follow-up

Thank you for your email. I apologize for the late reply. I was out of the office Friday through Tuesday.

I believe the staff opinions which were adopted by the RRC were detailed. Its interesting that you are soliciting suggestions from an attorney who you publicly stated was not serving his client well. That's a bit of a non sequitur.

Without regard to your comments, to which I refrained from retort in such an open forum, let us look at the term "energy facilities" for example. This term is not defined by the CRC. The CRC should know what the term it employs means and be able to define it for the public. It could mean anything from a nuclear power plant to a windmill on a farm to Tesla charging station. It is unclear to the public what the CRC means.

Or it could mean, as derived from the U.S. Code:

any equipment or facility which is or will be used primarily—

(A)

in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(B)

for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A).

Examples of energy facilities are (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

If your client cannot define its terms, you may want to advise your client to look at definitions adopted by the federal or other state governments. However, please keep in mind that adopting another agency's language does not resolve the RRC's objection if that language is ambiguous.

If the CRC cannot define its terms in either its own words or using another agencies', the CRC may want to consider whether it needs the rule. Otherwise gives the impression that the CRC and the division is making up the rules as they go along.

I hope this helps.

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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From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Tuesday, February 21, 2023 8:19 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Subject: [External] FW: follow-up

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

Bill,
I am just following up. I will be meeting with the CRC on Thursday of this week. If there are issues we can discuss regarding this rule set, please let me know. ~ Mary

From: Lucasse, Mary
Sent: Thursday, February 16, 2023 11:14 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: [Jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)
Subject: follow-up

Hi Bill,
Thanks for reaching out this morning. I would be interested in any suggestions you might have on how to move forward on specific rules. ~ Mary



Mary L. Lucasse (she/her)
Special Deputy Attorney General
NCDOJ - Environmental Division
PO Box 629
Raleigh, NC 27602
Direct: 919.716.6962
mlucasse@ncdoj.gov
www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

Subject: FW: [External] Revised submission of 15A NAC 07M.1102

From: Burgos, Alexander N

Sent: Friday, February 10, 2023 8:33 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Lucasse, Mary L; Liebman, Brian R <brian.liebman@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

Subject: RE: [External] Revised submission of 15A NAC 07M.1102

Hello Jennifer, I have posted it. Feel free to check the agenda as per Bill and Brian's guidance, I have posted this rule and the rules you submitted for CRC in December and January for consideration by the RRC next week.

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, February 9, 2023 5:38 PM

To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>

Subject: FW: [External] Revised submission of 15A NAC 07M.1102

Hi Alex,

I'm not seeing Bill's email below posted to the online Feb RRC agenda.

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: [External] Revised submission of 15A NAC 07M.1102

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

Sent: Wednesday, February 1, 2023 10:59 AM

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

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

Subject: RE: [External] Revised submission of 15A NAC 07M.1102

Thank you for your email. It is my present intention to recommend the RRC approve the above captioned rule as revised.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Tuesday, January 31, 2023 1:06 PM
To: Peaslee, William W; Rules, Oah
Cc: Burgos, Alexander N; Lucasse, Mary L; Goebel, Christine A; Davis, Braxton C; Lopazanski, Mike; Miller, Tancred; Howell, Jonathan; Willis, Angela
Subject: FW: [External] Revised submission of 15A NAC 07M.1102
Attachments: 15A NCAC 07M .1102 with tech changes (rev) Jan 31 2023 v3.docx

Hi Bill,

Please find attached 15A NCAC 07M .1102 for your review.

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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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 that meets the criteria set forth in Rule 15A NCAC 07H .0312 dredged from
5 navigation channels within the active nearshore, nearshore or ocean beach as defined in 15A NCAC 07H .0305 or
6 inlet hazard area as defined in 15A NCAC 07H .0304(2) shoal systems must ~~shall~~ not be removed permanently from
7 the active nearshore, beach or inlet hazard area ~~shoal system~~ unless the Director of the Division of Coastal
8 Management determines that no practicable alternative exists pursuant to the criteria in G.S. 113A-120(a)(9).
9 Preferably, this dredged material will be disposed of on the ocean beach or shallow active nearshore area where
10 environmentally acceptable and compatible with other uses of the beach.

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

13 ~~(b)-(e)~~ The Division of Coastal Management shall grant proposals for the use of dredged material ~~Material~~ in disposal
14 sites not privately owned shall be available by ~~to~~ anyone proposing placement in or on the active nearshore, ocean
15 beach, or inlet hazard area in a manner a beneficial use not inconsistent with Paragraph (a) of this Rule based on the
16 availability of dredged material, priority of the requests, and consideration of the criteria in G.S. 113A-120(a).

17 ~~(d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is~~
18 ~~in the public interest and shall be encouraged at every opportunity.~~

19
20 *History Note: Authority G.S. 113A-107; 113A-118(f); 113-229*

21 *Eff. October 1, 1992;*

22 *Readopted Eff. February 1, 2022.*

Burgos, Alexander N

Subject: FW: Coastal Resources Commission rules

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

Sent: Wednesday, January 18, 2023 12:54 PM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

Subject: RE: Coastal Resources Commission rules

Thank you for your email in which the CRC attempts to file revisions to its rules subject to September 2022 objection the day before the RRC February meeting. This email will only address those rules assigned to me.

Regarding rules 07M .0704 and .1102, the CRC has already filed rules pursuant to G.S. 150B-21.12(a)(1) in response to the RRC's objections from September 2022. However, it is noted that the CRC filed the rules without making any revisions. At its December 2022 meeting the RRC tabled consideration of the rules submitted pursuant to G.S. 150B-21.12(a)(1). There is no avenue for an agency to continue to file multiple G.S. 150B-21.12(a)(1) submissions of the same rule in the absence of an RRC request or its statement of continuing objection pursuant to G.S. 150B-21.12(c). Depending on the RRC's actions tomorrow, the CRC may be able to submit these revisions for future consideration pursuant to G.S. 150B-21.12(a)(1).

Regarding rule 07M .0402, this is the first submission pursuant to G.S. 150B-21.12(a)(1) in response to the RRC's objections from September 2022. Given that the CRC has waited four months from the objection and until the day before the RRC meeting to file a revised rule, I will recommend that the RRC table consideration of the submission until such time that the RRC has the opportunity to thoughtfully consider the matter.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, January 18, 2023 11:38 AM
To: Rules, Oah; Peaslee, William W; Liebman, Brian R; Duke, Lawrence
Cc: Burgos, Alexander N; Lucasse, Mary L; Goebel, Christine A; Lopazanski, Mike; Wright, Alyssa N; Willis, Angela; Davis, Braxton C
Subject: Coastal Resources Commission rules
Attachments: 2023-01-18 Ltr to RRC re remaining rules v. 2 with .0402 an .1102.pdf; 15A NCAC 07I .0508 with tech changes (mll) Jan 2023.docx; 15A NCAC 07I .0511 (mll) Jan 2023.docx; 15A NCAC 07J .0203 (mll) with tech changes v.2Jan 23.docx; 15A NCAC 07J .0204 (mll) with tech changes Jan 2023 v 2.docx; 15A NCAC 07J .0206 (mll rev)with tech changes Jan 2023 v2.docx; 15A NCAC 07J .0207 (mll) with tech changes Jan 2023.docx; 15A NCAC 07J .0208 (mll) with tech changes Jan 2023.docx; 15A NCAC 07M .0402 with tech changes Jan 2023 v2.docx; 15A NCAC 07M .0704 (mll) with tech changes Jan 2022 v3.docx; 15A NCAC 07M .1102 with tech changes (rev) Jan 2023 v3.docx

Attached are CRC's rewritten rules and a memo addressing the objections for review at tomorrow's RRC meeting.

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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JOSH STEIN
ATTORNEY GENERAL



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

January 18, 2023

North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609

Re: CRC's Response to RRC's Objections for the following rules:
07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305;
07I .0406, .0504, .0506, .0508, .0511, .0602, .0702;
07J .0203, .0204, .0206, .0207, .0208, .0312;
07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002,
.1101, and .1102

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Resources Commission ("CRC"), please accept this letter as a follow-up to comments provided at the December 15, 2022 RRC meeting. Note, some of the rules are addressed in more than one category.

First, as set forth in more detail in our November 23, 2022 letter, RRC counsel continued to recommend the RRC object to the CRC's rules at **15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07I .0504, .0508, .0511, .0602, .0702, 07J .0203, .0206, .0207, .0208, .0312, 07M .0201, .0202, .0401, .0403, .0701, .0704, .1001, .1002, and .1101** based on the allegation that "each of [these] . . . rules do not meet the definition of a "Rule" pursuant to G.S. 150B-2(8a)" and therefore the agency lacks the statutory authority to adopt these rules based on N.C. Gen. Stat. 150B-19.1(a)(1). This argument is simply incorrect. The CRC has authority to adopt "guidelines for the coastal area" through rulemaking consisting of "objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area" as recognized by the NC Supreme Court in *Adams v. Dept. of N.E.R.*, 295 N.C. 683, 249 S.E.2d 402 (1978). The CRC respectfully requests the Commission approve these rules based on authority in Chapter 113A, Article 7 and the North Carolina Supreme Court's decision.

Second, following receipt of our November 23, 2022 letter, RRC counsel continued to recommend that the RRC object to the use of the term "significant adverse impact" as ambiguous. This recommendation should be rejected. The phrase "significant adverse impact" has been recently approved by the RRC in other CRC rules. Furthermore, the North Carolina appellate courts understand this term of art (*see, e.g., Shell Island Homeowners Assoc. v. Tomlinson*, 134 N.C. App. 217 (1999) and the General Assembly has authorized the application of this standard (using the very same phrase). *See* N.C.G.S. § 113-229(e). For these reasons, the CRC respectfully requests the RRC approve the following rules which include that phrase: **07H .0508; .2305, 07J .0203; 07M .0402; .0703.**

Third, following receipt of our November 23, 2022 letter, RRC counsel again recommended the RRC object to the following rules as unnecessary: **07I .0406; .0506; .0702**. These rules synthesize different sections of statutes as allowed under G.S. § 150B-19(4) and/or include additional information. I urge this Commission not to accept the Staff's recommendation for these rules. Specifically: The middle sentence in 07I .0406 regarding "deficits resulting from administrative costs" is not contained in statute. This sentence in the Rule addresses a situation that can arise when a local government handling the CAMA minor permits incurs costs greater than the permit fee collected from the applicant. This sentence allows the local program to cover that amount from other CAMA permit reimbursements. Similarly, 07I .0506 combines and consolidates the various requirements imposed by law for the benefit of the regulated public. The rule also includes additional information regarding extra-territorial areas which is not in the statute and is necessary to implement the article as allowed by G.S. § 113A-124(c)(5). Finally, 7I .0702 provides something more than is contained in case law or black letter law by specifying that the CRC, not a court or the OAH, determines whether a local permit-letting agency exceeds its authority. For these reasons, the CRC respectfully requests that the RRC determine these three rules are necessary and approve the rules.

Finally, the CRC has provided additional authority and/or technical changes to address the previous objections raised by RRC Staff Counsel in September and December, 2022 for the following rules: 07I .0508; .0511; 07J .0203; .0204; .0206; .0207; .0208 and 07M .0402, .0704, and .1102.

For the above stated reasons, we respectfully request the RRC approve the remaining re-adopted rules addressed in this letter pursuant to G.S. § 150B-21.3A. Thank you for your consideration of this request.

Sincerely,



Mary L. Lucasse
Special Deputy Attorney General
Counsel to the CRC

cc: M. Renee Cahoon, CRC Chair, electronically
Braxton C. Davis, DCM Director, electronically
Mike Lopazanski, DCM Deputy Director, electronically
Angela Willis, CRC Rulemaking Coordinator, electronically
Jennifer Everett, DEQ Rulemaking Coordinator, electronically
William Peaslee, RRC Counsel, electronically
Brian Liebman, RRC Counsel, electronically
Lawrence Duke, RRC Counsel, electronically
Alex Burgos, Paralegal, Office of Administrative Hearings, electronically

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 the following and for each of the following shall
7 discuss and assess any assess the effects the project will have on the use of public trust waters, adjacent lands and on
8 the coastal resources, including the effects caused by activities related to exploration or development of OCS resources
9 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; and

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; 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;

- (7) ~~a discussion~~ an analysis of the impacts on the human environment including noise, vibration and visual impacts;
- (8) ~~a discussion~~ an analysis of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
- (9) other specific data ~~necessary required by for~~ the ~~various~~ state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with each agency or commission's applicable regulations, relevant standards and guidelines;
- (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed.
- (11) ~~a specific demonstration~~ an analysis that the proposed project is consistent with relevant local land use ~~plans, plans and with guidelines governing land uses in AECs;~~
- ~~Any~~ An impact ~~assessment~~ analysis for a proposed major energy facility shall include ~~a discussion of~~ the items described in Subparagraphs (a)(1) through (11) of this Rule for the associated energy exploration or development activities related to exploration or development of OCS resources and other energy facilities, including all foreseeable assessments of resource potential, including the gathering of scientific data, exploration wells, and any delineation activities that are likely to follow development, production, maintenance and decommissioning.
- (b) "Major energy facilities" are those energy ~~facilities-facilities,~~ described in G.S. 113A-119.2(3), which because of their size, magnitude or scope of impacts, have the potential to affect may cause a significant adverse impact on any land or water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include ~~include, but are not necessarily limited to;~~ the following:
- (1) Any facility ~~capable of~~ refining petroleum ~~products; consistent with G.S. 143-215.77;~~
 - (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum products or synthetic gas gas; as defined in G.S 143-215.96;
 - (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
 - (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
 - (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other equipment necessary for the operation of a wind generating facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, are capable of generating three megawatts or larger;
 - (6) Thermal energy generation;
 - (7) Major pipelines Pipelines 12 inches or more in diameter that carry petroleum products or synthetic 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. February 1, 2023.*

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 Division of Coastal Management shall consider following forms of mitigation requests based on the following
5 are ranked in order of preference:

6 (1) Enhancement of coastal resources with created or restored systems determined to be potentially
7 more consistent with productive of the resources characteristic of unaltered North Carolina
8 ecosystems described in G.S. 113A-102(a) than those destroyed.

9 (2) Creation or restoration of an area of similar ecological utility and potential biological value based
10 on goals in G.S. 113A-102(b) than that destroyed or altered.

11 (3) Creation or restoration of an area with a desirable but different ecological function or potential than
12 that destroyed or altered.

13 (4) The following forms of mitigation will shall be considered by the Division of Coastal Management
14 even though they do not meet the definition in 15A NCAC 7M .0702. They are actions which by
15 themselves shall not be deemed adequate to offset habitat losses, but and may be used in
16 combination with Subparagraphs (a) (1) through (3) to achieve the stated goal based on the criteria
17 set forth in Rule .0703(d) of this Section. of these Rules.

18 (A) Acquisition for public ownership of unique and ecologically important systems not
19 protected by state and/or or federal regulatory programs. The type of impacts to be
20 mitigated and the quality of the area to be acquired will be considered on a case-by-case
21 basis.

22 (B) Transfer of privately owned lands subject to state and federal regulatory control regulation
23 into public ownership.

24 (C) Provisions of funds for State, federal or accredited institution research or for management
25 programs.

26 (D) Increased public access to public trust resources for recreational use.

27 (b) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general
28 or specific use standards set forth in 15A NCAC 7H 07H .0208 if the proposal meets the criteria established in
29 Paragraph (a) of this Rule. If a development represents no significant loss to coastal resources, If feasible, the
30 mitigation proposal must be on-site, or proximate thereto, thereto, and must be designed to enhance the coastal
31 environment.

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

35 (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions
36 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126. G.S.

1 ~~113A-126~~ and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant
2 and the Division of Coastal Management, CRC.

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

5
6 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126;*
7 *Eff. January 1, 1984;*
8 *Readopted Eff. February 1, 2023.*

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 that meets the criteria set forth in Rule 15A NCAC 07H .0312 dredged from
5 navigation channels within the active ~~nearshore,~~ nearshore or ocean beach as defined in 15A NCAC 07H .0304 or
6 inlet hazard area as defined in 15A NCAC 07H .0305(2) shoal systems must ~~shall~~ not be removed permanently from
7 the active nearshore, beach or inlet hazard area ~~shoal system~~ unless the Director of the Division of Coastal
8 Management determines that no practicable alternative exists pursuant to the criteria in G.S. 113A-120(a)(9).
9 Preferably, this dredged material will be disposed of on the ocean beach or shallow active nearshore area where
10 environmentally acceptable and compatible with other uses of the beach.

11 (b) The Division of Coastal Management may encourage research through grant funding ~~Research~~ on the beneficial
12 use of dredged material, particularly poorly sorted or fine grained materials, and on innovative ways to dispose of this
13 material so that it is more readily accessible for beneficial use is encouraged.

14 (c) The Division of Coastal Management shall grant proposals for the use of dredged material ~~Material~~ in disposal
15 sites not privately owned shall be available ~~by to~~ anyone proposing placement in or on the active nearshore, ocean
16 beach, or inlet hazard area in a manner a beneficial use not inconsistent with Paragraph (a) of this Rule based on the
17 availability of dredged material, priority of the requests, and consideration of the criteria in G.S. 113A-120(a).

18 ~~(d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is~~
19 ~~in the public interest and shall be encouraged at every opportunity.~~

20
21 *History Note:* Authority G.S. 113A-107; 113A-118(f); 113-229

22 *Eff. October 1, 1992;*

23 *Readopted Eff. February 1, 2022.*

Burgos, Alexander N

Subject: FW: [External] RE: CRC rules addressing objections Part 1 of 2

From: Lucasse, Mary <MLucasse@ncdoj.gov>

Sent: Thursday, December 15, 2022 7:01 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

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

Subject: [External] RE: CRC rules addressing objections Part 1 of 2

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

Good morning,

After reviewing the RRC Staff Opinions provided on December 14, 2022, I am requesting RRC Staff Counsel recommend that the RRC defer consideration of the following rules to allow the CRC an opportunity to provide additional information and/or technical changes. Specifically, considering the information received today, the CRC would like to provide additional changes for 7I .0508, 07I .0511, 07J .0203, 07J .0204, 07J .0206, 07J .0207, 07J .0208, and 07M .0704 for consideration.

I look forward to your response. Thank you. ~ Mary



Mary L. Lucasse

Special Deputy Attorney General

NCDOJ - Environmental Division

PO Box 629

Raleigh, NC 27602

Direct: 919.716.6962

mlucasse@ncdoj.gov

www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 14, 2022 3:39 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N; Lucasse, Mary L
Subject: 15A NCAC 07M .0703
Attachments: 12.2022 - CRC 15A NCAC 07M .0703 Staff Opinion.doc

Attached please find a recommendation for objection on the above captioned rule. I apologize for the late notice.

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

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

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 14, 2022 11:06 AM
To: Everett, Jennifer
Cc: Burgos, Alexander N; Lucasse, Mary L; Lopazanski, Mike; Davis, Braxton C; Goebel, Christine A; Willis, Angela; Miller, Tancred; Wright, Alyssa N
Subject: 15A NCAC 07M .403, .1002, and .1102
Attachments: 12.2022 - CRC 15A NCAC 07M .1002 and .1102 Staff Opinion.doc; 12.2022 - CRC 15A NCAC 07M .0403 Staff Opinion.doc

Follow Up Flag: Follow up
Flag Status: Completed

Good morning,

Attached please find the staff opinions on the CRC's submissions of November 23, 2022 concerning the above captioned rules. The RRC will review the submissions this Thursday, December 15, 2022 at 9:00 am.

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

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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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, November 23, 2022 1:14 PM
To: Rules, Oah <oah.rules@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Willis, Angela <angela.willis@ncdenr.gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: CRC rules addressing objections Part 1 of 2

Hello,

Attached are rules and a letter from the Coastal Resources Commission in response to objections. This email addresses rules:

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305;

15A NCAC 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702;

15A NCAC 07J .0203, .0206, .0207, .0208, .0210, .0312;

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, .1102

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 rules addressing objections Part 1 of 2
Attachments: 12.2022 - CRC 15A NCAC 07M .0704 Staff Opinion.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, December 13, 2022 9:44 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: RE: CRC rules addressing objections Part 1 of 2

Good morning,

Please find the staff opinion on 15A NCAC 07M .0704.

It is my intention to recommend approval of Rules .0601 and .0603 as amended.

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

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: CRC rules addressing objections -Part 2 of 2
Attachments: 12.2022 CRC Rules Return Letter 07H and 07M.pdf

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, December 6, 2022 3:20 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: RE: CRC rules addressing objections -Part 2 of 2

Good afternoon:

Attached please find the return of the following rules pursuant to G.S. 150B-21.12(d).

15A NCAC 07H .0504, .0601, .0603, .0604, and
15A NCAC 07M .0503, .0801, .0802, .1201, .1202.

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

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

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, November 23, 2022 1:19 PM
To: Rules, Oah; Peaslee, William W; Liebman, Brian R; Duke, Lawrence
Cc: Lucasse, Mary L; Davis, Braxton C; Lopazanski, Mike; Willis, Angela; Miller, Tancred; Goebel, Christine A; Burgos, Alexander N; Wright, Alyssa N
Subject: CRC rules addressing objections -Part 2 of 2
Attachments: 15A NCAC 07H .0504 repeal for RRC Nov 23 2022.docx; 15A NCAC 07H .0601 repeal for RRC Nov 23 2022.docx; 15A NCAC 07H .0603 repeal for RRC Nov 23 2022.docx; 15A NCAC 07H .0604 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .0503 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .0801 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .0802 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .1201 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .1202 repeal for RRC Nov 23 2022.docx; 2022-11-23 CRC Letter requesting repeal (signed).pdf

Hello,

Attached are rules and a second letter from the Coastal Resources Commission in response to objections. This email addresses rules:

15A NCAC 07H .0504, .0601, .0603, .0604, and
15A NCAC 07M .0503, .0801, .0802, .1201, .1202.

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

From: Everett, Jennifer
Sent: Wednesday, November 23, 2022 1:14 PM
To: Rules, Oah; Peaslee, William W; Liebman, Brian R; Duke, Lawrence
Cc: Burgos, Alexander N; Lucasse, Mary L; Lopazanski, Mike; Davis, Braxton C; Goebel, Christine A; Willis, Angela; Miller, Tancred; Wright, Alyssa N
Subject: CRC rules addressing objections Part 1 of 2
Attachments: 15A NCAC 07H .0501 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0502 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0503 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0505 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0506 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0507 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0508 with tech change Nov 23 2022.docx; 15A NCAC 07H .0509 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0510 with tech changes Nov 23 2022.docx; 15A NCAC 07H .2305 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0406 Nov 23 2022.docx; 15A NCAC 07I .0504 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0506 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0508 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0511 Nov 23 2022.docx; 15A NCAC 07I .0602 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0702 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0203 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07J .0204 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0206 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0207 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0208 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0210 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0312 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0201 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0202 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0401 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0403 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0601 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .0603 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .0701 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0703 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .0704 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .1001 with tech changes Nov 23 2022.docx; 15A NCAC 07M .1002 with tech changes Nov 23 2022.docx; 15A NCAC 07M .1101 with tech changes Nov 23 2022.docx; 15A NCAC 07M .1102 with tech changes Nov 23 2022.docx; 2022-11-23-CRC Letter responding to RRC Objections (signed with attachment).pdf

Hello,

Attached are rules and a letter from the Coastal Resources Commission in response to objections. This email addresses rules:

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305;
15A NCAC 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702;
15A NCAC 07J .0203, .0206, .0207, .0208, .0210, .0312;
15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, .1102

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>

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JOSH STEIN
ATTORNEY GENERAL



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

November 23, 2022

North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609

**Re: CRC's Response to RRC's Objections to Rules 15A NCAC
07H .0504, .0601, .0603, .0604, and
07M .0503, .0801, .0802, .1201, .1202.**

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Management Commission ("CRC") and pursuant to N.C. Gen. Stat. § 150B-21.12(d), please accept this letter as the CRC's partial written response to the North Carolina Rules Review Commission ("RRC") September 17, 2022 letter objecting to the above referenced rules (the "Objection Letter"). The CRC submitted a letter dated November 22, 2022 addressing the remaining rules included in the Objection Letter.

During the periodic review process and in considering the Objection Letter, the CRC has identified the above referenced rules as ones that the CRC believes are no longer necessary. At its recent November 17, 2022 meeting, the CRC moved to repeal the above-referenced rules. Therefore, the CRC is submitting this written request to the RRC pursuant to N.C. Gen. Stat. § 150B-21.12(d) requesting the return of the above referenced rules. Specifically, the CRC is requesting the following rules be removed from the North Carolina Administrative Code in response to the RRC's Objections:

15A NCAC 07H .0504, .0601, .0603, .0604

15A NCAC 07M .0503, .0801, .0802, .1201, .1202

If there are any questions regarding this request, please do not hesitate to let us know.

Sincerely,

Mary L. Lucasse
Special Deputy Attorney General
Counsel to the CRC

North Carolina Rules Review Commission

November 23, 2022

Page 2

cc: M. Renee Cahoon, CRC Chair, electronically
Braxton C. Davis, DCM Director, electronically
Mike Lopazanski, DCM Deputy Director, electronically
Angela Willis, CRC Rulemaking Coordinator, electronically
Jennifer Everett, DEQ Rulemaking Coordinator, electronically
William Peaslee, RRC Counsel, electronically
Brian Liebman, RRC Counsel, electronically
Lawrence Duke, RRC Counsel, electronically
Alex Burgos, Paralegal, Office of Administrative Hearings, electronically

JOSH STEIN
ATTORNEY GENERAL



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

November 23, 2022

North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609

Re: CRC's Response to RRC's Objections to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305; 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702; 07J .0203, .0206, .0207, .0208, .0210, .0312; 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, .1102.

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Resources Commission ("CRC") and pursuant to N.C. Gen. Stat. § 150B-21.12(a)(1) and (2), please accept this letter as the CRC's partial written response to the North Carolina Rules Review Commission ("RRC") September 17, 2022 letter objecting to the above referenced rules (the "Objection Letter"). The CRC will be submitting a second letter (dated November 23, 2022) addressing the remaining rules included in the Objection Letter.

While the CRC disagrees with the RRC's objections, this written response is not intended to be—and should not be interpreted as—a written request to return the above-referenced rules pursuant to N.C. Gen. Stat. § 150B-21.12(d). The CRC is not seeking the return of these rules at this time and, instead, appreciates the opportunity to continue working with the RRC and its staff to resolve the RRC's objections.

At its recent November 17, 2022 regularly scheduled meeting, the CRC decided to submit additional technical changes as allowed by N.C. Gen. Stat. § 150B-21.12(a)(1) to the following rules: 07H .0501, .0506, .0508, .0509, .0510, 07I .0504, .0508, .0511, .0602, .0702, 07J .0203, .0204, .0206, .0207, .0208, .0210, .0312, 07M .0601, .0603, .0703, and .0704. While the CRC disagrees with the RRC's objections to these rules, we have attempted to resolve the RRC's concerns through additional technical changes and are submitting the revised rules to the RRC along with this Response. Please do not hesitate to let us know if there are any additional technical changes requested.

In addition, the CRC decided not to submit changes as allowed by N.C. Gen. Stat. § 150B-21.12(a)(2), for the following rules: 15A NCAC 07H .0502, .0503, .0505, .0507, .2305, 07I .0406, .0506, 07M .0201, .0202, .0401, .0402, .0403, .0701, .1001, .1002, .1101, .1102. The CRC disagrees with the RRC's objections to these rules.

The CRC is submitting the following additional information in an effort to resolve the concerns raised in RRC Objection Letter to all the above-referenced rules.

1.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(1).

In its Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07I .0504, .0508, .0511, .0602, .0702, 07J .0203, .0206, .0207, .0208, .0312, 07M .0201, .0202, .0401, .0403, .0701, .0704, .1001, .1002, and .1101 based on the allegation that “each of [these] . . . rules do not meet the definition of a “Rule” pursuant to G.S. 150B-2(8a)” and therefore the agency lacks the statutory authority to adopt these rules based on N.C. Gen. Stat. 150B-19.1(a)(1). *See* Objection Letter and attached RRC Staff Opinions. This argument is incorrect.

The CRC's authority and duty 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” is well established and uniquely provided for under its enabling statute. N.C. Gen. Stat. § 113A-107. In 1978, the North Carolina Supreme Court concluded that “the Act properly delegates authority to the CRC to develop, adopt and amend State guidelines for the coastal area.” *Adams v. NC Dep't of Natural & Economic Resources*, 295 N.C. 683, 698, 249 S.E. 2d 402, 411 (1978). The Commission provided an initial response on this issue in its September 1, 2022 Memorandum to Brian Liebman and William W. Peaslee, RRC Commission Counsel attached is a copy for your convenience.

During the RRC's September 15, 2022 meeting, RRC counsel was asked by one of the Commissioners for a response to the CRC's claim that that it has authority to adopt rules to set policies and guidelines. RRC counsel responded that the CRC could set policies and guidelines as contemplated by statute—just not by rulemaking. This response completely misunderstands the authority provided by the legislature to the CRC. As explained by the North Carolina Supreme Court, “amendments to the State guidelines by the CRC are considered administrative rule-making.”¹ *Adams*, 295 N.C. at 702, 249 S.E.2d at 413. (Emphasis added). This is consistent with the requirement that the CRC “shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement” unless it has “been adopted as a rule in accordance with this Article.” N.C. Gen. Stat. § 150B-18. Thus, as authorized by the North Carolina General Assembly in the CRC's enabling statute and confirmed by the North Carolina Supreme Court, the CRC is authorized to set guidelines (including objectives, policies, and standards) regulating the public and private use of land and waters within the coastal area through rule-making.

These rules are not newly adopted but have been in existence for decades as part of the North Carolina Administrative Code pursuant to the very same statutory authority. This creates “a rebuttable presumption that” each “rule was adopted in accordance with Part 2 of the Article.” *See* N.C. Gen. Stat. § 150B-21.9(a1). For the RRC to change course in 2022 and now assert that the CRC's long-standing rules are not within the authority

¹ This case was decided under an earlier iteration of the Administrative Procedure Act at N.C. Gen. Stat. 150A.

delegated to the agency by the General Assembly, is arbitrary and capricious and contrary to the North Carolina Supreme Court precedent.

In addition to addressing the RRC's generic objection regarding whether the rules are "Rules," the CRC has provided additional authority for specific rules that the RRC identified as lacking authority. For example, the RRC objected to 15A NCAC 07J .0208 claiming that CAMA does not authorize the circulation of CAMA permit application to other state agencies for review. However, the CRC was instructed by the General Assembly "to coordinate the issuance of permits" and consideration of variances under the Dredge & Fill Act and the Coastal Area Management Act "to avoid duplication and to create a single, expedited permitting process." N.C. Gen. Stat. § 113-229(e). Both statutes also provide for the CRC to adopt rules to implement these articles. *See* N.C. Gen. Stat. § 113-229(e) ("The CRC may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section.") and N.C. Gen. Stat. § 113A-124(c)(8) (The CRC has additional authority "[t]o adopt rules to implement this Article."). As noted by RRC counsel, a dredge and fill permit application is required to be circulated among State agencies and may be submitted to federal agencies. *See* RRC Staff opinion for 15A NCAC 07J .0208 attached to Objection Letter. Given the authority from the legislature requiring that the CRC create a single, expedited permitting process, this provision in the Dredge and Fill Act is sufficient to provide authorization for the CAMA permit applications to be circulated to state and federal agencies for review.

Based on the clarification provided in this letter, as well as the information previously submitted to the RRC, the CRC respectfully requests that the RRC rescind its earlier objection to these rules based on Section 150B-21.9(1).

2.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(2).

In its Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305, 07J .0203, .0204, .0206, .0210, 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, and .1102 based on the claim that these rules were ambiguous. The majority of the RRC's objection to these rules is not specific to individual rules. To the extent that specific words or phrases were identified as ambiguous by the Objection Letter, the CRC has attempted to provide further clarifying language. *See e.g.*, technical changes provided for 15A NCAC 07J .0203, .0204, .0206, .0210, .0601, .0603, .0703, .0704. If there are other technical changes that the RRC believes would resolve any remaining ambiguity, the CRC is willing to consider further changes.

The perceived ambiguity that the RRC has identified in 15A NCAC 07H .2305 regarding the use of the phrase "significant adverse impact" continues to puzzle the CRC. The General Assembly has authorized denial of "an application for a dredge or fill permit upon finding . . . that there will be significant adverse effect" as a result of the proposed dredging and filling. N.C. Gen. Stat. §113-229(e) (emphasis added). The General Assembly clearly understands that determining whether there is a significant adverse impact is not ambiguous. As the CRC has previously explained, this phrase is "a term of art used in other rules and understood by the courts. *See, e.g., Shell Island Homeowners Assoc. v. Tomlinson*, 134 NC App. 217 (1999). The CRC has used this phrase, or similar phrase,

throughout its rules to require an assessment of the impact of the development on the natural resources. *See e.g.*, 15A NCAC 07H .0209 (throughout), 07H .0308, 07J .1101, .1102, 1201, 07K .0202, 07M .0402. Many, if not most, of these rules were recently readopted or amended without the RRC objecting to the rule language requiring an assessment of the impact. It is arbitrary and capricious for the RRC to claim the use of this phrase in one rule is ambiguous when that objection has not been consistently asserted by the RRC.

Based on the changes provided, as well as the clarifying information provided above, the CRC respectfully requests that the RRC rescind its earlier objection based on Section 150B-21.9(2).

3.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(3).

In its Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07I .0406, .0506, 07J .0203, .0206, 07M .0201, .0202, .0401, .0403, .0701, .1001, .1101 on the grounds these rules were not “reasonably necessary” pursuant to N.C. Gen. Stat. §150B-21.9(3). The majority of these rules are those the RRC contends are not “Rules” and therefore, it also objects under section 3 claiming “only ‘Rules’ can be reasonably necessary.” *See* Objection Letter and attachments. In response, the CRC incorporates and relies on the arguments set forth above in Section 1 relating to N.C. Gen. Stat. § 150B-21.9(a)(1).

In its Objection Letter, the RRC objects to 15A NCAC 07I .0406 claiming that this rule simply restates information from “G.S. 113A-119.1 and in 15A NCAC 07J .0204.” *See* RRC Staff Opinion for 15A NCAC 07I .0406 attached to the Opinion Letter. Even if true, this does not provide a basis for rejecting the rule as unnecessary. The General Assembly provides that “a brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the “reasonably necessary” standard of review.” N.C. Gen. Stat. § 150B-19(4). In this rule, the CRC has provided a brief statement synthesizing information regarding the fee requirement found in two separate places. This is allowable under the Administrative Procedure Act. Moreover, the information included the middle sentence relating to “deficits” is not included elsewhere. Therefore, this rule is necessary, and the CRC respectfully requests the RRC rescind its earlier objection.

In its Objection Letter, the RRC also objects to 15A NCAC 07I .0506 on the basis that the rule is not reasonably necessary as it “re-states material regarding allocation of permit-letting authority that is contained in G.S. 113A-116, -118, and -121.” *See* RRC Staff Opinion for 15A NCAC 07I .0506 attached to Objection Letter (cleaned up). Even if true, this does not provide a basis for rejecting the rule as unnecessary. The General Assembly has provided that “a brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the “reasonably necessary” standard of review.” N.C. Gen. Stat. § 150B-19(4). Moreover, this rule provides additional clarifying information regarding boundaries and the extra-territorial zoning area subject to permit letting authority, and timeframes. This rule does not simply re-state material in the statute. Therefore, the rule is necessary, and the CRC respectfully requests the RRC rescind its earlier objection.

4.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(4).

In the Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07J .0203, .0204, 07M .0201, .0202, .0401, .0403, .0701, .1001, .1101, .1102 for “failure to comply with the Part 2 of Article 2A of the Administrative Procedure Act pursuant to G.S. 150B-21.9(4).” This section of the NC Administrative Procedure Act provides procedures for the adoption of temporary rules, emergency rules, permanent rules, and the periodic review of existing rules. In the Objection Letter and the attachments to the Objection Letter, the RRC has not identified the manner in which it alleges the CRC failed to follow the rulemaking procedures set forth in Part 2 of this Article during its periodic review and re-adoption of these rules.

Moreover, if this objection is merely intended to indicate that the RRC does not believe these rules meet the definition of a “Rule,” that objection is based on N.C. Gen. Stat. § 150B-19 which lists restrictions on what can be adopted as a rule in Part 1 of Article 2A of the Administrative Procedure Act—not in Part 2 of Article 2A. Therefore, a reference to Part 1 of Article 2A is not a proper basis for alleging that the rules were not adopted in accordance with Part 2 of Article 2A as required by N.C. Gen. Stat. § 150B-21.9(a)(4).

To the extent that the RRC is objecting to the procedure by which these rules were adopted by the CRC, we are providing the following information to address any such concern. As required by N.C. Gen. Stat. § 150B-21.3A(c), the CRC conducted an analysis of each existing rule and made an “initial determination as to whether the rule is necessary or unnecessary.” The classifications were posted for public comment and submitted to the Office of Administrative Hearings for posting on its Web site. The CRC accepted public comment for sixty days after the determination was posted from February 20–April 20, 2017. The agency amended classifications, responded to all objections, and sent a final report to the RRC, including the public comments. Thereafter, the CRC re-adopted these rules as required by July 31, 2020 and sent them out for public comment. Twenty public hearings were held between November 17 and December 10, 2019 throughout the twenty coastal counties included within the Coastal Area Management Act. The public comment period ended December 31, 2019. No public comments were received, no changes were proposed, and no fiscal analysis was required. The CRC re-adopted the rules at its regularly scheduled meeting on February 12, 2020. Thereafter, the CRC began submitting its re-adopted rules to the RRC in manageable groupings. At the RRC's request, the last 132 re-adopted rules were submitted in one large group in June 2022. The RRC objected to 47 of the 132 rules in its September 2022 Objection Letter.

There are fifteen remaining rules for which the RRC's objection is based, in part, on an alleged failure to comply with Part 2 of Article 2A. However, the RRC has not identified any procedural flaws in the process used by the CRC to re-adopt these rules pursuant to the requirements for the periodic review of rules in Part 2 of Article 2A of the Administrative Procedure Act. In addition, an attachment to the specific objection for 15A NCAC 07M .1102 includes a highlighted reference to the procedures for adopting a permanent rule. Since the relevant procedure here relates to the periodic review of rules, the relevance of this attachment is unclear.

If our understanding of the substance of this objection is incorrect, please provide specific information identifying the procedure established in N.C. Gen. Stat. § 150B-21.3A for the periodic review of existing rules or some other section included in Part 2 of Article 2A on which the RRC bases its objection. If there is no alleged flaw in the procedure by which these rules were re-adopted, the CRC respectfully requests that this objection be withdrawn.

In conclusion and based on the clarification provided in this letter, as well as the information previously submitted to the RRC, the CRC respectfully requests that the objections to each of the 38 rules addressed in this letter be withdrawn.

Sincerely,



Mary L. Lucasse
Special Deputy Attorney General
Counsel to the CRC

cc: M. Renee Cahoon, CRC Chair, electronically
Braxton C. Davis, DCM Director, electronically
Mike Lopazanski, DCM Deputy Director, electronically
Angela Willis, CRC Rulemaking Coordinator, electronically
Jennifer Everett, DEQ Rulemaking Coordinator, electronically
William Peaslee, RRC Counsel, electronically
Brian Liebman, RRC Counsel, electronically
Lawrence Duke, RRC Counsel, electronically
Alex Burgos, Paralegal, Office of Administrative Hearings, electronically

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.

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
5 **15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY**

6 It is hereby declared that the general welfare and public interest require that development along the ocean and
7 estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared
8 that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish
9 these public purposes, the planning of future land uses, **reasonable** rules and public expenditures **should 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, 2023.*

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

1 structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary
2 stabilization measures must be compatible with public use and enjoyment of the beach.

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

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

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

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

21
22 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*
23 *Eff. March 1, 1979;*
24 *Amended Eff. March 1, 1985;*
25 *RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;*
26 *Amended Eff. March 1, 1992;*
27 *RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;*
28 *Amended Eff. May 4, 1995;*
29 *Readopted Eff. January 1, 2023.*

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. January 1, 2023.*

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 G.S. 113A-1-2(b)(4)(a). resources.** Energy development shall be sited and designed to provide
35 maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration
36 of natural landforms.

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

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

- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- (9) ~~No energy~~ **Energy** facilities shall ~~not~~ be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and ~~areas in the vicinity of existing inlets;~~ **Inlet Hazard Areas identified in 15A NCAC 07H .0304;**
- (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
- (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
 - (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
 - (C) crossings of streams, rivers, and lakes except for existing ~~readily accessible~~ corridors;
 - (D) anchorage areas and port areas;
 - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
 - (F) ~~dump sites;~~ **Ocean Dredged Material Disposal Sites;**
 - (G) primary dunes and frontal dunes;
 - (H) established recreation or wilderness areas, such as federal, ~~state~~ **State** and local parks, forests, wildlife ~~refuges;~~ **refuges and other areas used in a like manner;**
 - (I) military air space, training or target area and transit lanes;
 - (J) cultural or historic sites of more than local significance; and
 - (K) segments of Wild and Scenic River System.
- (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided; and
- (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored ~~as soon as practicable~~ following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions ~~as soon as practicable~~ if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

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. January 1, 2023.*

1 15A NCAC 07M .0503 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2
3 **15A NCAC 07M .0503 POLICY STATEMENTS**

4
5 *History Note: Authority G.S. 113A-119; 113A-124(b);*

6 *Eff. October 1, 1982;*

7 *Amended Eff. May 1, 1990;*

8 *Repealed Eff. January 1, 2023.*

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
5 **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 encroach** upon the public **trust**
8 **rights trust, except as allowed by Rule .0603 of this Section,** nor discharge into the public trust waters of the coastal
9 area of North Carolina.

10
11 *History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); **113A-103; 113A-***
12 ***113(5); ~~113A-124(e)(5)~~;***
13 *Eff. July 1, 1983;*
14 *Readopted Eff. January 1, 2023.*

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 a marina permitted as development pursuant to the Coastal Area
6 Management Act of 1974. permitted marinas.

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

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

10
11 *History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-103; 113A-*
12 *119.2(a)(2); ~~113A-124(e)(5);~~*
13 *Eff. July 1, 1983;*
14 *Readopted Eff. January 1, 2023.*

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 07M .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. January 1, 2023.*

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) Before the ~~The~~ CRC may approve a development project for mitigation candidacy ~~candidacy~~ if the applicant shall ~~can~~
5 demonstrate that all 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; 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 .07M~~ .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the
24 environment overwhelmingly outweigh environmental losses based on the criteria set out in 15A NCAC 07M
25 .0703(d).

26 (c) Mitigation candidacy projects may be considered by the CRC during the permit processing time prescribed in 15A
27 NCAC 7J .0204, in accordance with the procedures set out in 15A NCAC 7J .0600 concerning declaratory rulings.
28 The applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC
29 7M .0703(a) provided that the applicant agrees that the permit processing time period set out in 15A NCAC 07J .0600
30 will not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant
31 to the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission
32 in obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior
33 to presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be
34 introduced at the meeting. CRC approval of the mitigation candidacy project is binding on the Commission and the
35 person applicant requesting it, in accordance with 15A NCAC ~~7J .07J~~ .0603(e).

36 (d) In determining whether to approve an application for development for which mitigation is proposed, the Division
37 of Coastal Management shall consider the scope of the project, the site of the proposed mitigation, the amount of

1 mitigation proposed, the historic uses of the development site and mitigation site, the public trust, and significant
2 adverse impacts.

3
4 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;*
5 *Eff. January 1, 1984;*
6 *Amended Eff. September 1, 1985;*
7 *Readopted Eff. January 1, 2023.*

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 Division of Coastal Management shall consider following forms of mitigation requests based on the following
5 are ranked in order of preference:

6 (1) Enhancement of coastal resources with created or restored systems determined to be potentially
7 more productive of the resources characteristic of unaltered North Carolina ecosystems than those
8 destroyed.

9 (2) Creation or restoration of an area of similar ecological utility and potential biological value than that
10 destroyed or altered.

11 (3) Creation or restoration of an area with a desirable but different ecological function or potential than
12 that destroyed or altered.

13 (4) The following forms of mitigation will shall be considered by the Division of Coastal Management
14 even though they do not meet the definition in 15A NCAC 7M .0702. They are actions which by
15 themselves shall not be deemed adequate to offset habitat losses, but and may be used in
16 combination with Subparagraphs (a) (1) through (3) to achieve the stated goal set forth in 15A
17 NCAC 07M .0703(d). of these Rules.

18 (A) Acquisition for public ownership of unique and ecologically important systems not
19 protected by state and/or or federal regulatory programs. The type of impacts to be
20 mitigated and the quality of the area to be acquired will be considered on a case-by-case
21 basis.

22 (B) Transfer of privately owned lands subject to state and federal regulatory control regulation
23 into public ownership.

24 (C) Provisions of funds for State, federal or accredited institution research or for management
25 programs.

26 (D) Increased public access to public trust resources for recreational use.

27 (b) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general
28 or specific use standards set forth in 15A NCAC 7H 07H .0208. If a development represents no significant loss to
29 coastal resources, the mitigation proposal must be on site, or proximate thereto, and must be designed to enhance the
30 coastal environment.

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

34 (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions
35 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126. G.S.
36 113A-126 and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant
37 and the CRC.

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

3
4 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126;*
5 *Eff. January 1, 1984;*
6 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0801 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

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

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

6
7 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. s. 1453(12);*

8 *Eff. November 1, 1985;*

9 *Repealed Eff. January 1, 2023.*

1 15A NCAC 07M .0802 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2
3 **15A NCAC 07M .0802 POLICY STATEMENTS**

4
5 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. s. 1453(12);*
6 *Eff. November 1, 1985;*
7 *Amended Eff. October 1, 1988;*
8 *Repealed Eff. January 1, 2023.*

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. January 1, 2023.*

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. January 1, 2023.*

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. January 1, 2023.*

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. January 1, 2023.*

1 15A NCAC 07M .1201 is readopted as published in 34:09 NCR 757 and is now repealed as follows::

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

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

6
7 *History Note: Authority G.S. 113A-102; 113A-103; 113A-107;*

8 *Eff. August 1, 1998;*

9 *Repealed Eff. January 1, 2023.*

1 15A NCAC 07M .1202 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2

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

4

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

6 *Eff. August 1, 1998;*

7 *Repealed Eff. January 1, 2023.*