

1 15A NCAC 07H .0208 is proposed for amendment as follows:

2
3 **15A NCAC 07H .0208 USE STANDARDS**

4 (a) General Use Standards

- 5 (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and
6 public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads,
7 factories, and parking lots are examples of uses that are not water dependent. Uses that are water
8 dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging,
9 bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring
10 pilings, navigational channels, access channels and drainage ditches;
- 11 (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant
12 has complied with the following standards:
- 13 (A) The location, design, and need for development, as well as the construction activities
14 involved shall be consistent with the management objective of the Estuarine and Ocean
15 ~~System AEC (Rule .0203 of this subchapter)~~ System AEC in Rule .0203 of this Section
16 and shall be sited and designed to avoid significant adverse impacts upon the productivity
17 and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as
18 defined by the Marine Fisheries Commission, and spawning and nursery areas;
- 19 (B) Development shall comply with State and federal water and air quality rules, statutes and
20 regulations;
- 21 (C) Development shall not cause irreversible damage to documented archaeological or historic
22 resources as identified by the N.C. Department of Cultural ~~resources~~; and Natural
23 Resources;
- 24 (D) Development shall not increase siltation;
- 25 (E) Development shall not create stagnant water bodies;
- 26 (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine
27 and ocean resources; and
- 28 (G) Development shall not jeopardize the use of the waters for navigation or for other public
29 trust rights in public trust areas including estuarine waters.
- 30 (3) When the proposed development is in conflict with the general or specific use standards set forth in
31 this Rule, the CRC may approve the development if the applicant can demonstrate that the activity
32 associated with the proposed project will have public benefits as identified in the findings and goals
33 of the Coastal Area Management Act, that the public benefits outweigh the long range adverse
34 effects of the project, that there is no reasonable alternate site available for the project, and that all
35 reasonable means and measures to mitigate adverse impacts of the project have been incorporated
36 into the project design and shall be implemented at the applicant's expense. Measures taken to
37 mitigate or minimize adverse impacts shall include actions that:

- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.

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

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

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

(b) Specific Use Standards

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

(A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;

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

(C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall

1 dredged material be placed on regularly flooded wetlands. New dredged material disposal
2 areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

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

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

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

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

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

15 (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas
16 and areas of submerged aquatic vegetation as defined by the MFC shall be avoided.
17 However, when essential to maintain a traditional and established use, maintenance
18 excavation may be approved if the applicant meets all of the following criteria:

19 (i) The applicant demonstrates and documents that a water-dependent need exists for
20 the excavation;

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

26 (iii) Excavated material can be removed and placed in a disposal area in accordance
27 with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and
28 submerged aquatic vegetation as defined by the MFC; and

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

31 (2) Hydraulic Dredging

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

35 (B) Dredged material shall be either confined on high ground by retaining structures or
36 deposited on beaches for purposes of renourishment if the material is suitable in accordance
37 with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;

- 1 (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall
- 2 employ soil stabilization measures to prevent entry of sediments into the adjacent water
- 3 bodies or coastal wetlands;
- 4 (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be
- 5 contained by pipe, trough, or similar device to a point waterward of emergent vegetation
- 6 or, where local conditions require, below normal low water or normal water level;
- 7 (E) When possible, effluent from diked disposal areas shall be returned to the area being
- 8 dredged;
- 9 (F) A water control structure shall be installed at the intake end of the effluent pipe;
- 10 (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis
- 11 with respect to dredging methods and dredged material disposal in accordance with
- 12 Subparagraph (a)(3) of this Rule; and
- 13 (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used
- 14 when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

15 (3) Drainage Ditches

- 16 (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four
- 17 feet deep (from ground surface) unless the applicant shows that larger ditches are
- 18 necessary;
- 19 (B) Dredged material derived from the construction or maintenance of drainage ditches through
- 20 regularly flooded marsh shall be placed landward of these marsh areas in a manner that
- 21 will insure that entry of sediment into the water or marsh will not occur. Dredged material
- 22 derived from the construction or maintenance of drainage ditches through irregularly
- 23 flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas
- 24 include relic disposal sites;
- 25 (C) Excavation of new ditches through high ground shall take place landward of an earthen
- 26 plug or other methods to minimize siltation to adjacent water bodies; and
- 27 (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas,
- 28 productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other
- 29 estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of
- 30 freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling
- 31 basins, water gates and retention structures are examples of design alternatives that may be
- 32 used to minimize sediment introduction.

33 (4) Nonagricultural Drainage

- 34 (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow
- 35 are minimized to both surface and ground water;
- 36 (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free
- 37 passage of water of sufficient depth; and

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

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

(A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:

- (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
- (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
- (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
- (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

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

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

(D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas

1 between parallel piers or any portion of the pier used only for access from land to the
2 docking spaces;

- 3 (E) To protect water quality in shellfishing areas, marinas shall not be located within areas
4 where shellfish harvesting for human consumption is a significant existing use or adjacent
5 to such areas if shellfish harvest closure is anticipated to result from the location of the
6 marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and
7 North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that
8 section, shellfish harvesting is a significant existing use if it can be established that shellfish
9 have been regularly harvested for human consumption since November 28, 1975 or that
10 shellfish are propagating and surviving in a biologically suitable habitat and are available
11 and suitable for harvesting for the purpose of human consumption. The Division of Coastal
12 Management shall consult with the Division of Marine Fisheries regarding the significance
13 of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that
14 have been harvested or are available for harvest in the area where harvest will be affected
15 by the development;
- 16 (F) Marinas shall not be located without written consent from the leaseholders or owners of
17 submerged lands that have been leased from the state or deeded by the State;
- 18 (G) Marina basins shall be designed to promote flushing through the following design criteria:
19 (i) the basin and channel depths shall gradually increase toward open water and shall
20 never be deeper than the waters to which they connect; and
21 (ii) when possible, an opening shall be provided at opposite ends of the basin to
22 establish flow-through circulation;
- 23 (H) Marinas shall be designed so that the capability of the waters to be used for navigation or
24 for other public trust rights in estuarine or public trust waters are not jeopardized while
25 allowing the applicant access to deep waters;
- 26 (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation
27 throughout all federally maintained channels and their boundaries as designated by the US
28 Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or
29 traffic reductions; or any other device, either physical or regulatory, that may cause a
30 federally maintained channel to be restricted;
- 31 (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation
32 sufficient to maintain water quality;
- 33 (K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this
34 Rule to accommodate disposal needs for future maintenance dredging, including the ability
35 to remove the dredged material from the marina site;

- 1 (L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200)
- 2 for management of stormwater runoff. Stormwater management systems shall not be
- 3 located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
- 4 (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and
- 5 listing the availability of local pump-out services;
- 6 (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting
- 7 will be done over dry land with collection and containment devices that prevent entry of
- 8 waste materials into adjacent waters;
- 9 (O) All marinas shall comply with all applicable standards for docks and piers, shoreline
- 10 stabilization, dredging and dredged material disposal of this Rule;
- 11 (P) All applications for marinas shall be reviewed by the Division of Coastal Management to
- 12 determine their potential impact to coastal resources and compliance with applicable
- 13 standards of this Rule. Such review shall also consider the cumulative impacts of marina
- 14 development in accordance with G.S. 113A-120(a)(10); and
- 15 (Q) Replacement of existing marinas to maintain previous service levels shall be allowed
- 16 provided that the development complies with the standards for marina development within
- 17 this Section.
- 18 (6) Piers and Docking Facilities.
- 19 (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted
- 20 only if the greater width is necessary for safe use, to improve public access, or to support
- 21 a water dependent use that cannot otherwise occur;
- 22 (B) The total square footage of shaded impact for ~~docks~~ docks, platforms and mooring facilities
- 23 (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a
- 24 maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water
- 25 slips shall not be counted in the total. Projects requiring dimensions greater than those
- 26 stated in this Rule shall be permitted only if the greater dimensions are necessary for safe
- 27 use, to improve public access, or to support a water dependent use that cannot otherwise
- 28 occur. Size restrictions shall not apply to marinas;
- 29 (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall
- 30 be elevated at least three feet above any coastal wetland substrate as measured from the
- 31 bottom of the decking;
- 32 (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need
- 33 for a larger boathouse and shall have sides extending no farther than one-half the height of
- 34 the walls as measured from the Normal Water Level or Normal High Water and covering
- 35 only the top half of the walls. Measurements of square footage shall be taken of the greatest
- 36 exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet
- 37 of shoreline, except that structural boat covers utilizing a frame-supported fabric covering

1 may be permitted on properties with less than 75 linear feet of shoreline when using
2 screened fabric for side walls. Size restrictions do not apply to marinas;

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

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

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

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

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

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

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

29 (I) Piers and docking facilities shall not interfere with the access to any riparian property and
30 shall have a minimum setback of 15 feet between any part of the pier or docking facility
31 and the adjacent property owner's areas of riparian access. The line of division of areas of
32 riparian access shall be established by drawing a line along the channel or deep water in
33 front of the properties, then drawing a line perpendicular to the line of the channel so that
34 it intersects with the shore at the point the upland property line meets the water's edge. The
35 minimum setback provided in the rule may be waived by the written agreement of the
36 adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the
37 adjacent property is sold before construction of the pier or docking facility commences, the

1 applicant shall obtain a written agreement with the new owner waiving the minimum
2 setback and submit it to the permitting agency prior to initiating any development of the
3 pier. Application of this Rule may be aided by reference to the approved diagram in 15A
4 NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations.
5 When shoreline configuration is such that a perpendicular alignment cannot be achieved,
6 the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable
7 as determined by the Director of the Division of Coastal Management; and

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

12 (7) Bulkheads

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

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

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

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

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

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

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

33 (iv) the need for a bulkhead below normal high water or normal water level is do-
34 cumented by the Division of Coastal Management; and

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

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

37 (8) Beach Nourishment

- 1 (A) Beach creation or maintenance may be allowed to enhance water related recreational
- 2 facilities for public, commercial, and private use consistent with the following:
- 3 (i) Beaches may be created or maintained in areas where they have historically been
- 4 found due to natural processes;
- 5 (ii) Material placed in the water and along the shoreline shall be clean sand and free
- 6 from pollutants. Grain size shall be equal to that found naturally at the site;
- 7 (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas
- 8 where siltation from the site would pose a threat to shellfish beds;
- 9 (iv) Material shall not be placed on any coastal wetlands or submerged aquatic
- 10 vegetation as defined by MFC;
- 11 (v) Material shall not be placed on any submerged bottom with significant shellfish
- 12 resources as identified by the Division of Marine Fisheries during the permit
- 13 review; and
- 14 (vi) Beach construction shall not create the potential for filling adjacent navigation
- 15 channels, canals or boat basins.
- 16 (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed
- 17 as a method of shoreline erosion control;
- 18 (C) Material from dredging projects may be used for beach nourishment if:
- 19 (i) it is first handled in a manner consistent with dredged material disposal as set forth
- 20 in this Rule;
- 21 (ii) it is allowed to dry prior to being placed on the beach; and
- 22 (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of
- 23 this Rule is removed from the disposal site for placement on the beach. Material
- 24 shall not be placed directly on the beach by dredge or dragline during maintenance
- 25 excavation.
- 26 (D) Beach construction shall comply with State and federal water quality standards;
- 27 (E) The renewal of permits for beach nourishment projects shall require an evaluation by the
- 28 Division of Coastal Management of any adverse impacts of the original work; and
- 29 (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment
- 30 only one time.
- 31 (9) Groins
- 32 (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal
- 33 water level unless a longer structure is justified by site specific conditions and by an
- 34 individual who meets any North Carolina occupational licensing requirements for the type
- 35 of structure being proposed and approved during the application process;
- 36 (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback
- 37 for rock groins shall be measured from the toe of the structure. This setback may be waived

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by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

- (C) Groins shall pose no threat to navigation;
- (D) The height of groins shall not exceed one foot above normal high water or normal water level;
- (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
- (F) "L" and "T" sections shall not be allowed at the end of groins; and
- (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.

(10) "Freestanding Moorings".

- (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;
- (B) Freestanding moorings shall be permitted only:
 - (i) to riparian property owners within their riparian corridors; or
 - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
- (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking;
- (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

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- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
 - (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;
 - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;
 - (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;
 - (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;
 - (J) Freestanding moorings associated with commercial shipping, public service, or temporary construction or salvage operations may be permitted without a public sponsor;
 - (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;
 - (L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;
 - (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and
 - (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and

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

3 (12) "Submerged Lands Mining"

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

- 5 (i) The biological productivity and biological significance of mine sites, or borrow
6 sites used for sediment extraction, shall be evaluated for significant adverse
7 impacts and a protection strategy for these natural functions and values provided
8 with the State approval request or permit application;
- 9 (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and
10 significant benthic communities identified by the Division of Marine Fisheries or
11 the WRC shall be avoided;
- 12 (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509
13 of this Subchapter; shipwrecks identified by the Department of Cultural
14 Resources; and unique geological features that require protection from
15 uncontrolled or incompatible development as identified by the Division of
16 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- 17 (iv) Mining activities shall not be conducted on or within 500 meters of significant
18 biological communities identified by the Division of Marine Fisheries or the
19 WRC, such as high relief hard bottom areas. "High relief" is defined for this Part
20 as relief greater than or equal to one-half meter per five meters of horizontal
21 distance;
- 22 (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine
23 or ocean resources; and
- 24 (vi) Mining activities shall not affect potable groundwater supplies, wildlife,
25 freshwater, estuarine, or marine fisheries.

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

- 30 (i) Monitoring by the applicant to ensure compliance with all applicable development
31 standards; and
- 32 (ii) A determination of the necessity and feasibility of restoration shall be made by
33 the Division of Coastal Management as part of the permit or consistency review
34 process. Restoration shall be necessary where it will facilitate recovery of the pre-
35 development ecosystem. Restoration shall be considered feasible unless, after
36 consideration of all practicable restoration alternatives, the Division of Coastal
37 Management determines that the adverse effects of restoration outweigh the

1 benefits of the restoration on estuarine or ocean resources. If restoration is
2 determined to be necessary and feasible, then the applicant shall submit a
3 restoration plan to the Division of Coastal Management prior to the issuance of
4 the permit.

5 (C) Dredging activities for the purposes of mining natural resources shall be consistent with
6 the development standards set out in this Rule;

7 (D) Mitigation. Where mining cannot be conducted consistent with the development standards
8 set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M
9 .0700; and

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

13 (13) "Wind Energy Facilities"

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

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

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

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

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

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

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

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

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

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

36 (iii) Development shall not cause irreversible damage to documented archeological
37 resources including shipwrecks identified by the Department of Cultural

1 Resources and unique geological features that require protection from
2 uncontrolled or incompatible development as identified by the Division of
3 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

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

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

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

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

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

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21 *History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*
22 *Eff. September 9, 1977;*
23 *Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;*
24 *RRC Objection due to ambiguity Eff. March 21, 1996;*
25 *Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;*
26 *June 1, 2010; August 1, 1998; May 1, 1996;*
27 *Readopted Eff. July 1, 2020;*
28 *Amended Eff. July 1, 2023; August 1, 2022.*