



NORTH CAROLINA
Environmental Quality

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CRC-22-23

November 3, 2022

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Rules Review Objections to Re-Adopted Rules – Additional Rules for Repeal

For the past four years the Division has been working towards compliance with G.S. § 150B-21.3A of the NC Administrative Procedures Act, which requires agencies to review all of their rules every 10 years under a process and schedule established by the Rules Review Commission (RRC). This review was established by the General Assembly in 2013 (Session Law 2013-413). If an agency does not conduct the review, its rules will expire and be removed from the Administrative Code, unless the rule is required to implement or conform to federal law.

The Division has completed the public comment phase of the review for 15A NCAC 7A, 7H, 7I, 7J, 7K, 7L and 7M rules, having held 20 public hearings in 2019-2020. No public comments were received. During that review, the Division and CRC identified 19 rules as unnecessary due to the rules being old, no longer applicable, containing only introductory language, reiterating statute or being generally superfluous. In February 2020, the Commission re-adopted the remainder of the rules in accordance with G.S. § 150B-21.3A. Since that time, Staff has been submitting the re-adopted rules in manageable-sized sections (Oceanfront related, GPs and rules currently being amended by the CRC) to the RRC for approval. At the request of RRC attorneys in order to complete the Periodic Review process, in June of this year, Staff submitted the remaining rules yet to be re-approved for review. As with the usual rulemaking procedures, Staff works with RRC attorneys to make technical changes to the submitted rules to remove ambiguity, identify the proper authorities and otherwise make the rules conform to the requirements of the NC Administrative Procedures Act and the formatting rules adopted by the RRC. Some of the remaining rules were approved by the RRC.

The remaining 47 rules were considered by the RRC during its September 15, 2022 meeting. The RRC objected to all of the remaining 47 rules for various reasons. On September 17, 2022, the RRC sent an objection letter providing the basis for its objections. *See* September 17, 2022 cover letter to Jennifer Everett, Coastal Resources Commission (attached). CRC Counsel will discuss the Commission's response to this letter in closed session following this action item.

During this process, Staff has identified additional rules the Division believes are no longer necessary due to the rules being old, no longer applicable, containing only introductory language, reiterating statute or being generally superfluous. Some of these rules were objected to by the RRC, others were not. Staff are proposing the following rules for repeal, and I have included a brief explanation with each rule. I will be discussing this rulemaking process in more detail at our upcoming meeting in Beaufort.



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Proposed Repeal of 15A NCAC 7H .0504 AECs Within Category

This rule is part of the grouping of rules under 15A NCAC 7H .0500 Natural and Cultural Resources Areas, AECs. The RRC objected to this rule based on 1) lack of statutory authority, 2) unclear or ambiguous, 3) unnecessary, 4) failure to comply with the APA. Staff recommends repeal in response to this objection because the rule contains no standards and merely states the subset of AECs under this category.

15A NCAC 07H .0504 AECs WITHIN CATEGORY

The description, significance, and management objectives for each AEC (coastal complex natural areas, coastal areas that sustain remnant species, unique coastal geologic formations, significant coastal architectural resources, and significant coastal historic architectural resources) within the grouping of fragile coastal natural and cultural resource areas follows in Rules .0505, .0506, .0507, .0509, and .0510 of this Section.

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. December 1, 1991; June 1, 1979.

Proposed Repeal of 15A NCAC 7H .0601 No Violation of Any Rule

This rule is part of the grouping of rules under 15A NCAC 7H .0600 Development Standards Applicable To All AECs. The RRC objected to this rule claiming 1) lack of statutory authority, 2) unclear or ambiguous, 3) unnecessary. Staff recommends repeal in response to this objection. Staff agrees with RRC Counsel that the Commission lacks the statutory authority to require adherence to other laws, and regulations, including local ordinances. Issuance of a CAMA permit does not relieve the applicant from complying with other regulations.

15A NCAC 07H .0601 NO VIOLATION OF ANY RULE

No development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations, or laws of the State of North Carolina or of local government in which the development takes place.

History Note: Authority G.S. 113A-107(a),(b); 113A-124;
Eff. September 9, 1977.

Proposed Repeal of 15A NCAC 7H .0603 Minimum Altitudes

This rule is part of the grouping of rules under 15A NCAC 7H .0600 Development Standards Applicable To All AECs. The RRC objected to this rule based on 1) lack of statutory authority and 2) failure to comply with the APA. Staff recommends repeal in response to this objection because Staff agrees with RRC Counsel that the Commission lacks the statutory authority to require adherence to FAA regulations.

15A NCAC 07H .0603 MINIMUM ALTITUDES

No development involving airspace activity shall be allowed in any AEC which would result in violation of minimum altitude standards adopted by the Federal Aviation Administration and codified at 14 CFR Part 91.79. Future amendments by the Federal Aviation Administration shall be deemed to be incorporated into this Rule pursuant to G.S. 150B-14(c) unless the Commission objects within 90 days of publication of the action in the Federal Register. Upon objection by the Commission to a change, the Commission shall initiate rule-making proceedings on



incorporation of the amendment into this Rule. The amendment will not be incorporated into this Rule pending a rule-making hearing and final action by the Commission on the proposed amendment.

History Note: Authority G.S. 113A-107(a),(b);
Eff. March 1, 1990.

Proposed Repeal of 15A NCAC 7H .0604 Noise Pollution

This rule is part of the grouping of rules under 15A NCAC 7H .0600 Development Standards Applicable To All AECs. The RRC objected to this rule claiming it was unclear or ambiguous and failed to comply with the APA. Staff recommends repeal in response to this objection because Staff believes the Commission lacks the statutory authority to regulated noise limits.

15A NCAC 07H .0604 NOISE POLLUTION

Except as required for safe aircraft takeoff and landing operations, airspace activity associated with coastal development shall not impose an increase in average noise exceeding 10 dBA above background levels. Noise measurements shall be normalized Ldn as set forth by the Environmental Protection Agency in its report 550/9-74-004 entitled Information on Levels of Environmental Noise Requisite to Protect the Public Health and Welfare with an Adequate Margin of Safety. The maximum noise level associated with any single event shall not exceed 85 dBA. These limits shall not apply where noise impacts are confined to surface areas owned or controlled by the project's proponent. Any noise monitoring required to ensure compliance with this Rule shall be the responsibility of the proponent.

History Note: Authority G.S. 113A-107(a),(b);
Eff. March 1, 1990.

Proposed Repeal of 15A NCAC 7J .0604 Federal Activities

This rule is part of the grouping of rules under 15A NCAC 7J .0600 Declaratory Rulings and Petitions for Rulemaking. The RRC did not object to this rule. However, the Division has identified this as a rule that should be repealed. Federal agencies do not receive CAMA permits; however, they are subject to the consistency provisions of the federal Coastal Zone Management Act (CZMA). Federal activities, permits and authorizations are required to be consistent with the State's NOAA approved coastal management program. As this process is dictated under the CZMA and corresponding federal regulations, the Division believes this rule is unnecessary.

15A NCAC 07J .0604 FEDERAL ACTIVITIES

(a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.

(b) The request for ruling shall include:

- (1) a statement identifying the rule, statute or order at issue;
- (2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of property adjacent to the property on which the proposed federal activity will take place;
- (3) a statement of facts proposed for adoption by the Commission and any documentary evidence supporting the proposed statement of facts;
- (4) a draft of the proposed ruling;
- (5) a statement indicating that the Division of Coastal Management has preliminarily determined that the project may be inconsistent with a coastal management statute or regulation; and



- (6) a statement identifying the factual issues in dispute between the Department and the federal agency.
- (c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent property owners and to persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling. Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.
- (d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission. Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

*History Note: Authority G.S. 113A-124; 150B-4;
Eff. November 30, 1992.*

Proposed Repeal of Section 15A NCAC 7M .0500 Post Disaster Policies

These rules were part of the CAMA Land Use Planning rules during the 1980s and early 1990s. The RRC objected to 07M .0503 claiming it was without statutory authority, was unclear or ambiguous, is unnecessary and failed to comply with the APA. Staff recommends repeal in response to this objection and also recommends repealing 07M .0501. When the 15A NCAC 7B CAMA Land Use Planning Guidelines were amended in 2002, this requirement was not included due to existing federal and state hazard mitigation planning requirements. Mitigation Planning is now handled by the Department of Public Safety. Development of a Hazard Mitigation Plan is a pre-requisite for applying for mitigation grants from NCEM and FEMA. The Division believes these rules are now unnecessary

SECTION .0500 - POST-DISASTER POLICIES

15A NCAC 07M .0501 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that all state agencies coordinate their activities to reduce the damage from coastal disasters. As predisaster planning can lay the groundwork for better disaster recovery, it is the policy of the State of North Carolina that adequate plans for post-disaster reconstruction should be prepared by and coordinated between all levels of government prior to the advent of a disaster.

*History Note: Authority G.S. 113A-102; 113A-107; 113A-120; 113A-124(c);
Eff. October 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

15A NCAC 07M .0503 POLICY STATEMENTS

(a) The lead responsibility for directing all disaster warning, evacuation and relief activities lies with the Secretary of the Department of Crime Control and Public Safety. The North Carolina Coastal Management Program will assist the Department of Crime Control and Public Safety in preparing plans and providing services to disaster areas.

- (1) The Coastal Resources Commission (hereafter referred to as "Commission") will establish procedures for streamlining permit procedures for post-disaster reconstruction.
- (2) The Division of Coastal Management (hereinafter referred to as "Division") will provide staff support to Crime Control and Public Safety as requested. Types of assistance which may prove helpful are assistance with damage assessment, participation at the disaster assistance center, and advice and assistance to State and federal public assistance offices.
- (3) The Commission will require that local governments include disaster planning activities in their land use plans.



- (b) The most effective and cost-efficient manner of dealing with natural disasters is mitigation. The Commission hereby establishes guidelines for planning to mitigate the effects of natural disasters.
- (1) The Commission will advise the North Carolina Building Code Council and the Federal Insurance Administration on standards for development in coastal hazard areas.
 - (2) The Commission will establish guidelines for local governments to establish reconstruction plans which contain:
 - (A) local plans and policies pertaining to desired relocation of public and private development;
 - (B) local policies pertaining to desired relocation of roads and utilities such as water, sewer, and electricity;
 - (C) local plans for possible public acquisition of hazardous areas, if desirable for public access or use;
 - (D) a detailed inventory of structures in hazardous areas to assist in determining damage;
 - (E) a list of property owners and addresses to assist in notifying of damage;
 - (F) local disaster plans shall be coordinated with mitigation plans prepared for the Federal Emergency Management Agency; and
 - (G) city and county plans shall be coordinated within counties and with adjoining jurisdictions.
 - (3) The Commission and office will advise the Department of Transportation and all public utilities as to the applicable policies and standards for development in areas where roads, bridges, water and sewer lines and other utilities are to be reconstructed or replaced. These policies include:
 - (A) Before damaged utilities and/or roads are rebuilt, the locations of existing easements and rights-of-ways in relation to new and future shorelines shall be assessed both as to their future safety from storm and erosion damage and their relationship to future development patterns.
 - (B) Within easements and rights-of-way, utilities and/or roads should be placed as far landward as practicable.
 - (C) If existing easements and rights-of-ways are too close to the shoreline to be safely used, new easements and rights-of-ways that are freer from coastal hazards shall be sought.
 - (D) If existing easements and rights-of-ways are too close to the shoreline to safely allow development seaward of them, the easements and rights-of-ways should be relocated landward unless there is public open-space acquisition of these lands.
 - (E) All utilities and roads shall be rebuilt according to sound coastal engineering practices and to the standards listed in (b)(6)(A) in this Rule to assure that damages from storms are minimized.
 - (4) The Commission and office will notify agencies responsible for public works projects that dunes, berms, and other flood control structures shall be rebuilt only in line with local plans.
 - (5) Temporary emergency housing should be located outside of hazardous areas.
 - (6) All repair and rebuilding of private and public structures shall be done in a safe and sound manner.
 - (A) All reconstruction shall comply with the standards of the Guidelines for Areas of Environmental Concern, North Carolina Building Code (including wind resistant standards), the National Flood Insurance Program and local reconstruction plans.
 - (B) If land is resubdivided, all lots shall allow adequate room for construction under the standards listed in this Rule.
 - (7) If located in areas desirable for public access or use, lots upon which structures have been destroyed should be acquired for public use.
 - (A) Local governments should establish policies in their local land use plans for public acquisition of highly vulnerable areas for public access and use in their land use plans.
 - (B) The Federal Emergency Management Agency and other state and federal agencies should provide monies for public acquisition rather than continuing to fund rebuilding in high hazard areas.

*History Note: Authority G.S. 113A-119; 113A-124(b);
Eff. October 1, 1982;
Amended Eff. May 1, 1990.*



Proposed Repeal of Section 15A NCAC 7M .0800 Coastal Water Quality Policies

These rules address Coastal Water Quality Policies. The RRC objected to these rules claiming 1) lack of statutory authority, 2) unclear or ambiguous, 3) unnecessary, and 4) failure to comply with the APA. Staff recommends repeal in response to this objection. These rules simply state the importance of water quality and that it is of statewide significance and contains no standards. Staff agrees with RRC Counsel that the Commission lacks the statutory authority to require adherence to other laws, and regulations. Issuance of a CAMA permit does not relieve the applicant from complying with other regulations.

SECTION .0800 - COASTAL WATER QUALITY POLICIES

15A NCAC 07M .0801 DECLARATION OF GENERAL POLICIES

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

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

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

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

15A NCAC 07M .0802 POLICY STATEMENTS

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

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

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

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



Proposed Repeal of Section 15A NCAC 7M .0900 Policies On Use Of Coastal Airspace

The RRC did not object to this rule. However, the Division recommends repeal because this rule seek to dictate the use of airspace which the Division believes is outside the Commission's authority.

15A NCAC 07M .0902 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that access corridors free of special use airspace designations shall be preserved along the length of the barrier islands and laterally at intervals not to exceed 25 miles to provide unobstructed access both along the coastline and from inland areas to the coast. Such access corridors shall extend from the surface to an altitude of 6000 feet above sea level except where communication and radar services allow positive aircraft control at lower altitudes.

(b) Development of aviation-related projects and associated airspace management practices shall, to the maximum extent practicable, facilitate use of aircraft by local, state and federal government agencies for purposes of resource management, law enforcement and other activities related to the public health, safety and welfare. In any case, access to restricted areas shall be provided on a periodic basis for routine enforcement flights and access shall be provided on an emergency basis when required to respond to an immediate threat to public health and safety.

*History Note: Authority G.S. 113A-102(b); 113A-107;
Eff. March 1, 1990.*

Proposed Repeal of Section 15A NCAC 7M .1200 Policies On Ocean Mining

This Section was adopted as companion policies associate with the 15A NCAC 7H .0208(b)(12) Submerged Land Mining Rules. The RRC objected to these rules claiming 1) lack of statutory authority, 2) unclear or ambiguous, 3) unnecessary, and 4) failure to comply with the APA. Staff recommends repeal in response to this objection. The policy statement of 7M .1200 simply require adherence to the CAMA, and other established state standards and regulations. The use standards that would be applied to any federal consistency determination associated with ocean mining in federal waters are found in the Submerged Lands Mining rules making these policy statements unnecessary.

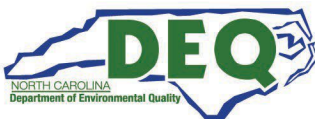
SECTION .1200 - POLICIES ON OCEAN MINING

15A NCAC 07M .1201 DECLARATION OF GENERAL POLICY

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

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

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



History Note: Authority G.S. 113A-102; 113A-103; 113A-107;
Eff. August 1, 1998.

15A NCAC 07M.1202 POLICY STATEMENTS

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

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

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

History Note: Authority G.S. 113A-102; 113A-107;
Eff. August 1, 1998.

