



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

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Secretary

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Director

CRC-23-21

October 31, 2023

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Proposed Amendments to 15A NCAC 7H .0208, 7H .0308 and 7M .0603 to Address Rules Review Commission Objections

As you recall, the Commission has had several issues related to the readoption of your coastal development rules through the legislatively required periodic rules review process as well as proposed amendments submitted to the Rules Review Commission (RRC). As part of the usual rulemaking process, the RRC staff requests technical changes to rules adopted by the CRC to address issues of ambiguity in the proposed rules, statutory authority, and compliance with other provisions of the NC Administrative Procedures Act. Most recently, DCM has submitted proposed amendments to 15A NCAC 7H .0208 General Use Standards and 15A NCAC 7M .0603 Floating Structures Policies to include amendments related to floating upweller systems associated with shellfish aquaculture and to 15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas to include amendments related to the use of beach mats for dune crossovers and enhanced handicap access. The RRC has objected to these rules on the basis that portions of the rules are either unclear, ambiguous, or lack statutory authority.

In both 7H .0208 and 7H .0308, the RRC has objected to the use of the term “significant adverse impact”. This term has been used in your rules since the inception of the program and is a key phrase, when used by one of the review agencies in comments on a CAMA permit application, that may require alteration of a proposed development activity or a denial of the permit. The phrase has been used as a “term of art” and has been used by the General Assembly in various statutes, in other state regulations, in federal regulations, and by appellate courts to analyze negative impacts in various cases. This term has been used in your rules for decades and the RRC has approved its use repeatedly, most recently with readoption of the rule in 2020. However, the RRC now objects to “significant adverse impacts” because your rules “...provide no definition of this term, provides no examples to elucidate the meaning of the term, or any other guidance that would allow the regulated public to determine whether a particular project is in compliance with this Rule and the laws undergirding it.”

DCM Staff and CRC counsel have responded that the term has been used in CAMA, NC Dredge and Fill law, and elsewhere; however, the RRC maintains that the meaning of the term is not included in any of the CRC rules or within the CRC’s authority. During the RRC meeting in



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which these rules were being discussed, the RRC Commissioners seemed receptive to incorporating a definition to satisfy this concern.

Attached is an amended version of 7H .0208 and 7H .0308 that now includes a definition that is based on similar considerations found in the National Environmental Policy Act (NEPA). The amended rule also includes several other changes (highlighted) to address additional RRC objections as well as DCM Staff proposals to address outdated or problematic provisions. These amendments include:

15A NCAC 7H .0208 Use Standards

- Cleaning up various references in the rule related to Environmental Management Commission and Marine Fisheries Commission definitions (PNAs, SAV and ORWs).
- 7H .0208(b)(1)(E) – deleting specific use standards for boat basin design. The Division has relied on DWR flushing models to ensure adequate water exchange, making this provision unnecessary.
- 7H .0209(b)(1)(I) - including a provision of the Dredge and Fill Law by reference for maintenance excavation.
- 7H .0208(b)(5)(A) – eliminating the preference for upland basin marinas over open water marinas. This preference dates from the early days of the coastal program and was intended to preserve public trust rights by attempting to encourage marina development away from open water areas. The provisions also cite preferences for marina development that minimize impacts to estuarine habitats by dredging and protection of water quality through adequate flushing. Over the years, the preference has had little influence on the siting of marinas and DCM Staff believe it is not necessary. The provisions themselves are not being deleted, only the order of preference. The siting options are being retained to indicate the “types” of marinas that will be allowed.
- 7H .0208(b)(5)(C) – delete provision encouraging dry storage marinas. As with the preference criteria for marina siting, this provision dates from the early days of the coastal program and was intended to preserve public trust areas. It has not been utilized and DCM Staff believe it is no longer necessary.
- 7H .0208(b)(5)(K) – delete provision for marinas to be designed with areas on-site that can accommodate dredged material associated with maintenance dredging. Another older provision that has not been used. DCM Staff do not believe it is necessary.
- 7H .0208(b)(5)(O) – delete provision requiring marinas to adhere to applicable standards for docks and piers, shoreline stabilization and dredged material disposal. DCM Staff do not believe this provision is necessary as it is accounted for in other CRC rules.
- 7H .0208(b)(6)(D) – clarifies that the calculation of the height of boathouse walls are measured from the water to the bottom edge of the roofline.
- 7H .0308(b)(6)(G) – restructuring for clarity the provision restricting docks and piers to be no longer than the established pier head line of a shoreline except in cases where the dock/pier is 100 feet long or less.

- 7H .0208(b)(7)(D)(iv) – delete provision requiring DCM to document the need for a bulkhead below high/normal water level documented through 7H .0208(b)(7)(D)(iv). This is duplicative of the provision in (D)(i) requiring an identifiable erosion problem.
- 7H .0208(b)(8)(D) – delete provision requiring beach construction to comply with State and federal water quality standards. DCM Staff do not believe this provision is necessary.
- 7H .0208(b)(9)(E) – addition of requirement that groin structures be designed by an individual who meets any NC occupational licensing requirements for the structures being proposed. This is standard language to cover engineers, landscape architects etc.
- 7H .0208(b)(10)(iii) – relocate provision in mooring rules to accommodate NC DOT, State Ports and temporary salvage operations.
- 7H .0208(b)(12)(E) – delete provision for public benefits exception associated with submerged lands mining. The exception is already within the rule at 7H .0208(A)(3) and is not necessary here.
- 7H .0208(b)(13)(D) - delete provision for public benefits exception associated with wind energy facilities. The exception is already within the rule at 7H .0208(A)(3) and is not necessary here.

15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas

The proposed amendments are to allow residential use of beach matting for dune crossovers and to allow local, state and federal entities to use beach matting farther than six feet from the toe of the dune provided that they coordinate the installation with the NC Wildlife Resources Commission and the USF&W Service. The RRC did not object to the amended rule language, however, similar to 7H .0208, there was an objection to the use of “significant adverse impact”. The definition developed for 7H .0208 is proposed for use here as well.

15A NCAC 7M .0603 Floating Structure Policy Statements

The Commission had approved amendments regarding the siting of Floating Upweller Systems (FLUPSYs), which are used to grow out shellfish and protect them from predation until they reach a specific size to survive within a shellfish lease. The Commission had proposed rule amendments that would address FLUPSYs as floating structures and require them to be sited in a permitted marina or at a private docking facility where they would be subject to the same platform area limitations that apply elsewhere in your rules. The proposed amendments to 15A NCAC 07H .0208 Piers and Docking Facilities referenced platforms and the amendments to 7M .0600 Floating Structure Policies specifically stated that FLUPSYs may be permitted at a private docking facility or in a permitted marina.

You will recall that the North Carolina Shellfish Growers Association asserted that oyster farmers who hold shellfish leases and franchisees are entitled to the agricultural CAMA permit exemption under N.C.G.S. § 113A-103(b)(4). In response, the Commission requested that its counsel review the issue related to the CAMA and the CRC’s ability to adopt rules related to shellfish aquaculture. CRC’s counsel found that the legislature explicitly defined development to include “the placement of a floating structure” in the Public Trust Areas and Estuarine Waters

AECs under N.C.G.S. § 113A-103(5)(a) and that the exceptions to the definition do not explicitly refer to aquaculture, floating structures, navigable waters, shellfish, or submerged lands. The CRC therefore has the statutory authority to require a CAMA permit for platforms and floating structures within a shellfish lease.

The RRC has received 10 letters of objection from the Shellfish Growers Association and others stating that the CRC did not have statutory authority to regulate shellfish aquaculture as it was agriculture (which automatically sends the proposed amendments for legislative review if adopted by the RRC). The NC Farm Bureau also made oral comments at the September 2023 RRC meeting reiterating the Growers Association position. While RRC staff counsel agreed with the position of CRC counsel, the RRC objected to the proposed amendments based on a lack of statutory authority.

DCM Staff is recommending that the CRC remove the language that would have allowed/required siting FLUPSYs at private docks and permitted marinas to satisfy the RRC objection.

Staff is recommending approval of these proposed amendments and I look forward to discussing any questions you may have at our upcoming meeting in Beaufort.

1 15A NCAC 07H .0208 is amended as published **with changes** in 37:15 NCR 1036-1046 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 **in 15A NCAC 03I .0101(4)(i)**, and spawning
19 and nursery areas;

20 (B) Development shall comply with State and federal water and air quality rules, **statutes**
21 **statutes**, and regulations;

22 (C) Development shall not cause irreversible damage to documented archaeological or historic
23 resources as identified by the N.C. Department of Natural and Cultural resources;
24 Resources;

25 (D) Development shall not increase siltation;

26 (E) Development shall not create stagnant water bodies;

27 (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine
28 and ocean resources; and

29 (G) Development shall not jeopardize the use of the waters for navigation or for other public
30 trust rights in public trust areas including estuarine waters.

31 (3) When the proposed development is in conflict with the general or specific use standards set forth in
32 this Rule, the CRC may approve the development if the applicant can demonstrate that the activity
33 associated with the proposed project will have public benefits **as identified consistent with** the
34 findings and goals of the Coastal Area Management Act identified in G.S. 113A-102; **as identified**
35 **in G.S. 113A-102**, that the public benefits outweigh the ~~long range~~ adverse effects of the project,
36 that there is no **reasonable** alternate site available for the project, and that all **reasonable** means and
37 measures to mitigate adverse impacts of the project have been incorporated into the project design

1 and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse
2 impacts shall include actions that:

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

6 (4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial
7 post larval development of finfish and crustaceans takes ~~place.~~ place and ~~They are usually located~~
8 ~~in the uppermost sections of a system where~~ populations are uniformly in their early juvenile stages.
9 Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission
10 (MFC) at 15A NCAC 03R .0103 and by the N.C. Wildlife Resources Commission (WRC) at 15A
11 NCAC 10C .0502 and 15A NCAC 03R .0103;

12 (5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas
13 classified by the N.C. Environmental Management Commission ~~(EMC).~~ (EMC) as defined in 15A
14 NCAC 02B .0225. ~~In those estuarine waters and public trust areas classified as ORW by the EMC,~~
15 ~~no permit required by the Coastal Area Management Act shall be approved for any project which~~
16 ~~would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for~~
17 ~~estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by~~
18 ~~specific use standards, no permit shall be issued if the activity would, based on site specific~~
19 ~~information, degrade the water quality or outstanding resource values;~~ and

20 (6) Beds of "submerged aquatic vegetation" ~~(SAV)~~ are defined as those habitats in public trust and
21 estuarine ~~waters-waters,~~ that occur in both subtidal and intertidal zones and may occur in isolated
22 patches or cover extensive areas, vegetated with one or more species of submergent vegetation.
23 vegetation as listed in 15A NCAC 03I .0101(4)(i). ~~These vegetation beds occur in both subtidal and~~
24 ~~intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed~~
25 ~~is submerged aquatic vegetation beds are defined by the Marine Fisheries Commission.~~ Any rules
26 relating to SAVs beds of submerged aquatic vegetation shall not apply to non-development control
27 activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

28 (7) "Adverse impact," "adverse impacts," "adverse effects," or similar formulations, are defined as an
29 effect or impact that is opposed or antagonistic to the goals of the Coastal Area Management Act as
30 found in G.S. 113A-102(b) and with the provisions of G.S. 113-229.

31 (8) "Significant" as used in this section includes consideration of both context and intensity. Context
32 means that the significance of an adverse impact or effect must be analyzed from several
33 perspectives that include society as a whole (human, national), the affected subregion of the North
34 Carolina coast, the local area and all directly and indirectly affected parties. Both short-and long-
35 term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be
36 considered in evaluating intensity:

- 37 (A) both beneficial and adverse impacts;

- (B) the degree to which the proposed action affects public health or safety;
- (C) unique characteristics of the geographic area;
- (D) the degree to which the effects on the quality of the human environment are likely to be controversial;
- (E) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;
- (F) the degree to which the action may establish a precedent for future actions;
- (G) the degree to which the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts;
- (H) the degree to which the action may cause the loss or destruction of scientific, cultural, historical, and environmental resources and;
- (I) the impact is more than de minimus, that is, large enough to make a difference.

(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 as defined in 15A NCAC 07H .0208(a)(6)~~, 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 ~~not~~ 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~~ ~~quality~~, or adjacent ~~wetlands, wetlands~~. ~~Navigation channels and canals may be allowed 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 coastal~~ 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 dredged material be placed on regularly ~~or irregularly~~ flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
 - (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;

- 1 (E) ~~Boat basin design shall maximize water exchange by having the widest possible opening~~
2 ~~and the shortest practical entrance canal. Depths of boat basins shall decrease from the~~
3 ~~waterward end inland;~~
- 4 (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting
5 waters;
- 6 (G) Construction of finger canal systems are not allowed. Canals shall be either straight or
7 meandering with no right angle corners;
- 8 (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design
9 may include shoreline stabilization, vegetative stabilization, or setbacks based on soil
10 characteristics; and
- 11 (I) Maintenance excavation in canals, ~~channels~~ channels, and boat basins within primary
12 nursery areas and ~~areas~~ beds of submerged aquatic vegetation as ~~defined in 15A NCAC~~
13 ~~03I .0101(4)(i), by the MFC~~ Marine Fisheries Commission shall be avoided. However,
14 when essential to maintain a traditional and established use, maintenance excavation ~~may~~
15 ~~shall~~ be approved if the applicant meets all of the following criteria:
- 16 (i) ~~The applicant demonstrates and documents that~~ There has been navigational use
17 ~~of the area; water dependent need exists for the excavation;~~
- 18 (ii) There exists a previously permitted channel that was constructed or maintained
19 under permits issued by the State or ~~Federal~~ federal government. If a natural
20 channel was in use, or if a human-made channel was constructed before permitting
21 was necessary, there shall be evidence that the channel was continuously used for
22 a specific purpose;
- 23 (iii) Excavated material can be removed and placed in a disposal area in accordance
24 with Part (b)(1)(B) ~~and Part (b)(1)(C)~~ of this Rule without impacting adjacent
25 nursery areas and ~~beds of~~ submerged aquatic vegetation as defined ~~as defined in~~
26 ~~15A NCAC 03I .0101(4)(i); by the MFC; Marine Fisheries Commission and~~
- 27 (iv) The original depth and width of a human-made or natural channel shall not be
28 increased to allow a new or expanded use of the ~~channel.~~ channel; and
- 29 (v) Consistent with the provisions of G.S. 113-229.
- 30 (2) Hydraulic Dredging
- 31 (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to
32 preclude erosion of the containment dike and a maximum distance from spillways to allow
33 settlement of suspended solids;
- 34 (B) Dredged material shall be either confined on high ground by retaining structures or
35 deposited on beaches for purposes of renourishment if the material is suitable in accordance
36 with ~~15A NCAC 7H .0208(b)(8) and 15A NCAC 7H .0312 and the rules in this Subchapter,~~
37 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~~ ensure that entry of sediment into the water or marsh will not occur. Dredged
22 material derived from the construction or maintenance of drainage ditches through
23 irregularly flooded marshes shall be placed on non-wetlands wherever feasible.
24 Non-wetland areas include ~~relic~~ existing 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 bedssubmerged aquatic vegetation ~~beds~~ as defined by the ~~MFC,~~
29 Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) or other estuarine habitat.
30 Drainage ditches shall be designed so as to minimize the effects of freshwater inflows,
31 sediment, and the introduction of nutrients to receiving waters. Settling basins, water ~~gates~~
32 gates, and retention structures are examples of design alternatives that may be used to
33 minimize sediment introduction.
- 34 (4) Nonagricultural Drainage
- 35 (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow
36 are minimized to both surface and ground water;

- 1 (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free
2 passage of water of sufficient ~~depth;~~ depth required to allow passage of those migratory
3 organisms; and
- 4 (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- 5 (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin basin, or wet boat
6 storage facility constructed to accommodate more than 10 boats and providing any of the following
7 services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities,
8 and repair service. Excluded from this definition are boat ramp facilities allowing access only,
9 temporary docking, and none of the preceding services. Expansion of existing facilities shall comply
10 with the standards of this Subparagraph for all development other than maintenance and repair
11 necessary to maintain previous service levels. Marinas shall comply with the following standards:
- 12 (A) Marinas shall be sited in non-wetland areas or in deep waters water (areas areas not
13 requiring dredging) dredging, and shall not disturb shellfish resources, beds of submerged
14 aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i), by the Marine Fisheries
15 Commission—MFC, or wetland habitats, except for dredging necessary for access to
16 high-ground sites. The following four alternatives for siting marinas are listed in order of
17 preference for the least damaging alternative; marina projects shall be allowed, designed to
18 accommodate have the highest of these four priorities: priorities that is deemed feasible by
19 the permit letting agency; priorities that is deemed feasible by the permit letting agency
20 based on its assessment of the associated adverse impacts.
- 21 (i) an upland basin site requiring no alteration of wetland or estuarine habitat and
22 providing flushing by tidal or wind generated water circulation or basin design
23 characteristics;
- 24 (ii) an upland basin site requiring dredging for access when the necessary dredging
25 and operation of the marina will not result in significant adverse impacts to
26 existing fishery, shellfish, or wetland resources and the basin design shall provide
27 flushing by tidal or wind generated water circulation;
- 28 (iii) an open water site located outside a primary nursery area which utilizes piers or
29 docks rather than channels or canals to reach deeper water; and
- 30 (iv) an open water marina requiring excavation of no intertidal habitat, and no
31 dredging greater than the depth of the connecting channel.
- 32 (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas
33 which require dredging through primary nursery areas for access. Maintenance dredging
34 in primary nursery areas for existing marinas shall comply with the standards set out in
35 Part (b)(1)(I) of this Rule;
- 36 ~~(C) — To minimize coverage of public trust areas by docks and moored vessels, dry storage~~
37 ~~marinas shall be used where feasible;~~

1 ~~(D)~~(C) Marinas to be developed in waters subject to public trust ~~rights, rights~~ ~~(other other~~ than
2 those created by dredging upland basins or ~~canals)~~ ~~canals~~, for the purpose of providing
3 docking for residential developments shall be allowed no more than 27 square feet of public
4 trust areas for every one linear foot of shoreline adjacent to these public trust areas for
5 construction of docks and mooring facilities. The 27 square feet allocation does not apply
6 to fairway areas between parallel piers or any portion of the pier used only for access from
7 land to the docking spaces;

8 ~~(E)~~(D) To protect water quality in shellfishing areas, marinas shall not be located within areas
9 where shellfish harvesting for human consumption is a significant existing use or adjacent
10 to such areas if shellfish harvest closure ~~is anticipated to~~ ~~will~~ result from the location of the
11 marina. In compliance with 33 ~~U.S.C. § U.S. Code Section~~ 101(a)(2) of the Clean Water
12 Act and North Carolina Water Quality Standards ~~(15A NCAC 02B .0200)~~ ~~15A NCAC 02B~~
13 ~~.0200~~ adopted pursuant to that section, shellfish harvesting is a significant existing use if it
14 can be established that shellfish have been regularly harvested for human consumption
15 since November 28, 1975 or that shellfish are propagating and surviving in a biologically
16 suitable habitat and are available and suitable for harvesting for the purpose of human
17 ~~consumption.~~ ~~consumption as determined by the NC Division of Marine Fisheries in~~
18 ~~accordance with 15A NCAC 18A .0900.~~ The Division of Coastal Management shall
19 consult with the Division of Marine Fisheries regarding the significance of shellfish harvest
20 as an existing use and the magnitude of the quantities of shellfish that have been harvested
21 or are available for harvest in the area where harvest will be affected by the development;

22 ~~(F)~~(E) Marinas shall not be located without written consent from the leaseholders or owners of
23 submerged lands that have been leased from the ~~state~~ ~~State~~ or deeded by the State;

24 ~~(G)~~(F) Marina basins shall be designed to promote flushing through the following design criteria:
25 (i) the basin and channel depths shall gradually increase toward open water and shall
26 never be deeper than the waters to which they connect; and
27 (ii) when possible, an opening shall be provided at opposite ends of the basin to
28 establish flow-through circulation;

29 ~~(H)~~(G) Marinas shall be designed so that the capability of the waters to be used for navigation or
30 for other public trust rights in estuarine or public trust waters are not jeopardized while
31 allowing the applicant access to deep waters;

32 ~~(I)~~(H) Marinas shall be located and constructed so as to avoid ~~adverse~~ impacts on navigation
33 throughout all federally maintained channels and their boundaries as designated by the US
34 Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or
35 traffic reductions; or any other device, either physical or regulatory, that may cause a
36 federally maintained channel to be restricted;

- 1 ~~(D)~~(I) Open water marinas shall not be enclosed within breakwaters that preclude circulation
2 sufficient to maintain water ~~quality~~ quality; as determined by the Division of Water
3 Resources.
- 4 ~~(K)~~ Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this
5 Rule to accommodate disposal needs for future maintenance dredging, including the ability
6 to remove the dredged material from the marina site;
- 7 ~~(L)~~(J) Marina design shall comply with all applicable EMC requirements ~~(15A NCAC 02B .0200)~~
8 15A NCAC 02B .0200 for management of stormwater runoff. Stormwater management
9 systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H
10 .0209(d);
- 11 ~~(M)~~(K) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and
12 listing the availability of local pump-out services;
- 13 ~~(N)~~(L) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting
14 will be done over dry land with collection and containment devices that prevent entry of
15 waste materials into adjacent waters;
- 16 ~~(O)~~ All marinas shall comply with all applicable standards for docks and piers, shoreline
17 stabilization, dredging and dredged material disposal of this Rule;
- 18 ~~(P)~~(M) All applications for marinas shall be reviewed by the Division of Coastal Management to
19 determine their potential impact to coastal resources and compliance with applicable
20 standards of this Rule. Such review shall also consider the cumulative impacts of marina
21 development in accordance with G.S. 113A-120(a)(10); and
- 22 ~~(Q)~~(N) Replacement of existing marinas to maintain previous service levels shall be allowed
23 provided that the development complies with the standards for marina development within
24 this Section.
- 25 (6) Piers and Docking Facilities.
- 26 (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted
27 only if the greater width is necessary for safe use, to improve public ~~access~~, access or to
28 support a water dependent use that cannot otherwise occur;
- 29 (B) The total square footage of ~~shaded impact for docks~~ docks, ~~platforms~~ platforms, and
30 mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of
31 shoreline with a maximum of 2,000 square ~~feet~~, feet to limit shading impacts to the
32 substrate. In calculating the ~~shaded impact~~, the total square footage, uncovered open water
33 slips shall not be counted in the total. Projects requiring dimensions greater than those
34 stated in this Rule shall be permitted only if the greater dimensions are necessary for safe
35 use, to improve public access, or to support a water dependent use that cannot otherwise
36 occur. Size restrictions shall not apply to marinas;

- 1 (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall
2 be elevated at least three feet above any coastal wetland substrate as measured from the
3 bottom of the decking;
- 4 (D) A boathouse shall not exceed 400 square feet except to accommodate a documented ~~need~~
5 ~~need, provided to the Division of Coastal Management~~ by the ~~application applicant~~ for a
6 larger boathouse and shall have sides extending no farther than one-half the height of the
7 walls as measured from the Normal Water Level or Normal High ~~Water to the bottom edge~~
8 ~~of the roofline.~~ and covering only the top half of the walls. Measurements of square footage
9 shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots
10 with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-
11 supported fabric covering may be permitted on properties with less than 75 linear feet of
12 shoreline when using screened fabric for side walls. Size restrictions do not apply to
13 marinas;
- 14 (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to
15 accommodate a documented need for a larger boat lift;
- 16 (F) Piers and docking facilities shall be single story. They may be roofed but shall not be
17 designed to allow second story use;
- 18 (G) Pier and docking facility length shall be limited by:
- 19 ~~(i) not extending beyond the established pier or docking facility length along the~~
20 ~~same shoreline for similar use. This restriction does not apply to piers 100 feet or~~
21 ~~less in length unless necessary to avoid unreasonable interference with navigation~~
22 ~~or other uses of the waters by the public;~~
- 23 ~~(ii)(i)~~ (ii)(i) not extending into the channel portion of the water body; and
- 24 ~~(iii)(ii)~~ (iii)(ii) not extending more than one-fourth the width of a natural water body, or human-
25 made canal or basin. Measurements to determine widths of the water body, canals,
26 or basins shall be made from the waterward edge of any coastal wetland
27 vegetation that borders the water body. The one-fourth length limitation does not
28 apply in areas where the U.S. Army Corps of Engineers, or a local government in
29 consultation with the Corps of Engineers, has established an official pier-head
30 line. The one-fourth length limitation shall not apply when the proposed pier is
31 located between longer piers or docking facilities within 200 feet of the applicant's
32 property. ~~However, the proposed pier or docking facility shall not be longer than~~
33 ~~the pier head line established by the adjacent piers or docking facilities, nor longer~~
34 ~~than one third the width of the water body.~~
- 35 (iii) Notwithstanding (i) and (ii), the proposed pier or docking facility shall not be
36 longer than the pier head line established by the piers or docking facilities along
37 the same contiguous shoreline having the same land use, nor longer than one-third

the width of the water body. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public.

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

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility 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 pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

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

(7) Bulkheads

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

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

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

- 1 (D) Bulkheads shall be permitted below normal high water or normal water level only when
2 the following standards are met:
- 3 (i) the property to be bulkheaded has an identifiable erosion problem, whether it
4 results from natural causes or adjacent bulkheads, or it has unusual geographic or
5 geologic features, e.g. steep grade ~~bank: bank, which will cause the applicant~~
6 ~~unreasonable hardship under the other provisions of this Rule;~~
- 7 (ii) the bulkhead alignment extends no further below normal high water or normal
8 water level than necessary to allow recovery of the area eroded in the year prior
9 to the date of application, to align with adjacent bulkheads, or to mitigate the
10 ~~unreasonable hardship resulting from the~~ unusual geographic or geologic features;
- 11 (iii) the bulkhead alignment will not adversely impact public trust rights or the
12 property of adjacent riparian owners; ~~and;~~
- 13 ~~(iv) the need for a bulkhead below normal high water or normal water level is do-~~
14 ~~cumented by the Division of Coastal Management; and~~
- 15 ~~(v)(iv)~~ the property to be bulkheaded is in a non-oceanfront area.
- 16 (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- 17 (8) Beach Nourishment
- 18 (A) Beach creation or maintenance ~~may~~ shall be allowed to enhance water related recreational
19 facilities for public, commercial, and private use if consistent with all of the following:
- 20 (i) Beaches ~~may be created or maintained~~ are located in areas where they have
21 historically been found due to natural processes;
- 22 (ii) Material placed in the water and along the shoreline shall be clean sand, sand and
23 free from pollutants. Grain size shall be equal to that found naturally at the site;
- 24 (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas
25 where siltation from the site would pose a threat to shellfish beds;
- 26 (iv) Material shall not be placed on any coastal wetlands or submerged aquatic
27 vegetation beds as defined by the Marine Fisheries Commission in 15A NCAC
28 03I .0101(4)(i); by MFC;
- 29 (v) Material shall not be placed on any submerged bottom with significant shellfish
30 resources as identified by the Division of Marine Fisheries during the permit
31 review; and
- 32 (vi) Beach construction shall not ~~create the potential for~~ cause filling of adjacent
33 navigation channels, ~~canals~~ canals, or boat basins.
- 34 (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed
35 as a method of shoreline erosion control;
- 36 (C) Material from dredging projects may be used for beach nourishment if:

- 1 (i) it is first handled in a manner consistent with dredged material disposal as set forth
2 in ~~this Rule; 15A NCAC 7H .0208;~~
- 3 (ii) it is allowed to dry prior to being placed on the beach; and
- 4 (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of
5 this Rule is removed from the disposal site for placement on the beach. Material
6 shall not be placed directly on the beach by dredge or dragline during maintenance
7 excavation.
- 8 ~~(D) Beach construction shall comply with State and federal water quality standards;~~
- 9 ~~(E)(D)~~ The renewal of permits for beach nourishment projects shall require an evaluation by the
10 Division of Coastal Management of any significant adverse impacts of the original work;
11 and
- 12 ~~(F)(E)~~ Permits issued for beach nourishment shall be limited to authorizing beach nourishment
13 only one time.
- 14 (9) Groins
- 15 (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal
16 water level unless a longer structure is justified by site specific conditions and by an
17 individual who meets any North Carolina occupational licensing requirements for the type
18 of structure being proposed and approved during the application process;
- 19 (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback
20 for rock groins shall be measured from the toe of the structure. This setback may be waived
21 by written agreement of the adjacent riparian owner(s) or when two adjoining riparian
22 owners are co-applicants. Should the adjacent property be sold before construction of the
23 groin commences, the applicant shall obtain a written agreement with the new owner
24 waiving the minimum setback and submit it to the permitting agency prior to initiating any
25 development of the groin;
- 26 (C) Groins shall pose no threat to navigation;
- 27 (D) The height of groins shall not exceed one foot above normal high water or normal water
28 level;
- 29 (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant
30 provides evidence the Division of Coastal Management a design showing that more
31 structures are needed for shoreline stabilization. The groin structures shall be designed by
32 an individual who meets any North Carolina occupational licensing requirements for the
33 structures being proposed.
- 34 (F) "L" and "T" sections shall not be allowed at the end of groins; and
- 35 (G) Riprap material used for groin construction shall be free from loose dirt or any other
36 pollutant and of a size sufficient to prevent its movement from the site by wave and current
37 action.

- 1 (10) "Freestanding Moorings".
- 2 (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating ~~structure~~
- 3 ~~structure~~, or other water craft to a stationary underwater device, mooring buoy, buoyed
- 4 anchor, or piling as long as the piling is not associated with an existing or proposed pier,
- 5 dock, or boathouse;
- 6 (B) Freestanding moorings shall be permitted only:
- 7 (i) to riparian property owners within their riparian corridors; ~~or~~
- 8 (ii) to any applicant proposing to locate a mooring buoy consistent with a water use
- 9 plan that is included in either the local zoning or land use ~~plan-plan, or~~
- 10 ~~(iii) is associated with commercial shipping, public service, or temporary construction~~
- 11 ~~or salvage operations.~~
- 12 (C) All mooring fields shall provide an area for access to any ~~mooring(s)~~ ~~moorings~~ and other
- 13 land based operations that shall include wastewater pumpout, trash ~~disposal~~ ~~disposal~~, and
- 14 vehicle parking;
- 15 (D) To protect water quality of shellfishing areas, mooring fields shall not be located within
- 16 areas where shellfish harvesting for human consumption is a significant existing use or
- 17 adjacent to such areas if shellfish harvest closure ~~is anticipated to~~ ~~will~~ result from the
- 18 location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water
- 19 Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards
- 20 adopted pursuant to that section, shellfish harvesting is a significant existing use if it can
- 21 be established that shellfish have been regularly harvested for human consumption since
- 22 November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable
- 23 habitat and are available and suitable for harvesting for the purpose of human ~~consumption.~~
- 24 ~~consumption as determined by the Division of Marine Fisheries in accordance with 15A~~
- 25 ~~NCAC 18A .0900.~~ The Division of Marine Fisheries shall be consulted regarding the
- 26 significance of shellfish harvest as an existing use and the magnitude of the quantities of
- 27 shellfish that have been harvested or are available for harvest in the area where harvest will
- 28 be affected by the development;
- 29 (E) Moorings shall not be located without written consent from the leaseholders or owners of
- 30 submerged lands that have been leased from the state or deeded by the State;
- 31 (F) Moorings shall be located and constructed so as to avoid ~~adverse~~ impacts on navigation
- 32 throughout all federally maintained channels. This includes permanent or temporary
- 33 mooring sites, speed or traffic reductions, or any other device, either physical or regulatory,
- 34 which may cause a federally maintained channel to be restricted;
- 35 (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation
- 36 and degrade water quality in violation of EMC ~~standards;~~ ~~in accordance with 15A NCAC~~
- 37 ~~2B .0225.~~

- 1 ~~(H)~~ Mooring and the associated land based operation design shall comply with all applicable
2 EMC requirements for management of stormwater runoff;
- 3 ~~(H)~~(H) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of
4 any waste from boat toilets or any other discharge and listing the availability of local pump-
5 out services and waste disposal;
- 6 ~~(J)~~ Freestanding moorings associated with commercial shipping, public service, or temporary
7 construction or salvage operations may be permitted without a public sponsor;
- 8 ~~(K)~~(I) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing
9 including the length of the vessel to be moored. Moorings and the attached vessel shall not
10 interfere with the access of any riparian owner nor shall it block riparian access to channels
11 or deep water, which allows riparian access. Freestanding moorings shall not interfere with
12 the ability of any riparian owner to place a pier for access;
- 13 ~~(L)~~(J) Freestanding moorings shall not be established in submerged cable or pipe crossing areas
14 or in a manner that interferes with the operations of an access through any bridge;
- 15 ~~(M)~~(K) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard
16 and the WRC requirements and the required marking maintained for the life of the
17 mooring(s); and
- 18 ~~(N)~~(L) The type of material used to create a mooring must be free of pollutants and of a design
19 and type of material so as to not present a hazard to navigation or public safety.
- 20 (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine
21 systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if
22 all of the following conditions are met:
- 23 (A) the area to be filled was not created by excavating lands which were below the normal high
24 water or normal water level;
- 25 (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed
26 the elevation of said wetlands so that wetland function will be restored;
- 27 (C) the filling will not adversely impact any designated primary nursery area, shellfish bed,
28 beds of submerged aquatic vegetation as defined by the Marine Fisheries Commission in
29 15A NCAC 03I .0101(4)(i) by the MFC, coastal wetlands, public trust right right, or public
30 trust usage; and
- 31 (D) the filling will not adversely affect the value and enjoyment of property of any riparian
32 owner.
- 33 (12) "Submerged Lands Mining"
- 34 (A) Development Standards. Mining of submerged lands shall meet all the following standards:
- 35 (i) The Division of Coastal Management shall evaluate the biological productivity
36 and biological significance of mine sites, or borrow sites used for sediment
37 extraction, shall be evaluated extraction for significant adverse impacts and a

- 1 protection strategy for these ~~natural functions and values~~ sites provided with the
2 State approval request or permit application;
- 3 (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and
4 significant benthic communities identified by the Division of Marine Fisheries or
5 the WRC shall be avoided;
- 6 (iii) Mining shall avoid ~~significant~~ archaeological resources ~~as defined in Rule .0509~~
7 ~~of this Subchapter;~~ and shipwrecks identified by the Department of Cultural
8 Resources; and unique geological features that require protection from
9 uncontrolled or incompatible development as identified by the Division of
10 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- 11 (iv) Mining activities shall not be conducted on or within 500 meters of ~~significant~~
12 biological communities identified by the Division of Marine Fisheries or the
13 WRC, such as high relief hard bottom areas. "High relief" is defined for this Part
14 as relief greater than or equal to one-half meter per five meters of horizontal
15 distance;
- 16 (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine
17 or ocean resources; and
- 18 (vi) Mining activities shall not ~~negatively~~ affect potable groundwater supplies,
19 wildlife, freshwater, estuarine, or marine fisheries.
- 20 (B) Permit Conditions. Permits for submerged lands mining ~~may~~ shall be conditioned on the
21 applicant amending the mining proposal to include measures necessary to ensure
22 compliance with the provisions of the Mining Act and the rules for development set out in
23 this Subchapter. Permit conditions shall also include:
- 24 (i) Monitoring by the applicant to ensure compliance with all applicable development
25 standards; and
- 26 (ii) A determination of the necessity and feasibility of restoration shall be made by
27 the Division of Coastal Management as part of the permit or consistency review
28 process. Restoration shall be necessary where it will facilitate recovery of the pre-
29 development ecosystem. Restoration shall be considered feasible unless, after
30 consideration of all practicable restoration alternatives, the Division of Coastal
31 Management determines that the adverse effects of restoration outweigh the
32 benefits of the restoration on estuarine or ocean resources. If restoration is
33 determined to be necessary and feasible, then the applicant shall submit a
34 restoration plan to the Division of Coastal Management prior to the issuance of
35 the permit.
- 36 (C) Dredging activities for the purposes of mining natural resources shall be consistent with
37 the development standards set out in ~~this Rule;~~ 15A NCAC 7H .0208.

1 (D) Mitigation. Where mining cannot be conducted consistent with the development standards
2 set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M
3 .0700; and

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

7 (13) "Wind Energy Facilities"

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

- 9 (i) an evaluation of the proposed noise impacts of the turbines to be associated with
10 the proposed facility;
- 11 (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the
12 proposed facility;
- 13 (iii) an evaluation of avian and bat impacts of the proposed facility;
- 14 (iv) an evaluation of viewshed impacts of the proposed facility;
- 15 (v) an evaluation of potential user conflicts associated with development in the
16 proposed project area; and
- 17 (vi) a plan regarding the action to be taken upon decommissioning and removal of the
18 wind energy facility. The plan shall include estimates of monetary costs, time
19 frame of ~~removal~~ ~~removal~~, and the proposed site condition after
20 decommissioning.

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

- 24 (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and
25 significant benthic communities identified by the Division of Marine Fisheries or
26 the WRC shall be avoided;
- 27 (ii) Development shall not be sited on or within 500 meters of ~~significant~~ biological
28 communities identified by the Division of Marine Fisheries or the WRC, such as
29 high relief hard bottom areas. High relief is defined for this standard as relief
30 greater than or equal to one-half meter per five meters of horizontal distance;
- 31 (iii) Development shall not cause irreversible damage to documented archeological
32 resources including shipwrecks identified by the Department of ~~Natural and~~
33 ~~Cultural Resources and unique geological features~~ ~~as identified by the State~~
34 ~~Archaeologist pursuant to G.S. 113A-113(b)(4)(g)~~ that require protection from
35 uncontrolled or incompatible ~~development;~~ ~~development as identified by the~~
36 ~~Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-~~
37 ~~113(b)(4)(g);~~

- 1 (iv) Development activities shall be timed to avoid significant adverse impacts on the
- 2 life cycles of estuarine or ocean resources, or wildlife;
- 3 (v) Development or operation of a wind energy facility shall not jeopardize the use
- 4 of the surrounding waters for navigation or for other public trust rights in public
- 5 trust areas or estuarine waters; and
- 6 (vi) Development or operation of a wind energy facility shall not interfere with air
- 7 navigation routes, air traffic control areas, military training routes, or
- 8 special use airspace and shall comply with standards adopted by the Federal
- 9 Aviation Administration and codified under 14 CFR Part 77.13.

10 (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant

11 amending the proposal to include measures necessary to ensure compliance with the

12 standards for development set out in this Rule. Permit conditions may include monitoring

13 to ensure compliance with all applicable development standards; and

14 ~~(D) — Public Benefits Exception. Projects that conflict with these standards, but provide a public~~

15 ~~benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this~~

16 ~~Rule.~~

17

18 *History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-115; 113A-115.1; 113A-124; 113-229;*

19 *Eff. September 9, 1977;*

20 *Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;*

21 *RRC Objection due to ambiguity Eff. March 21, 1996;*

22 *Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;*

23 *June 1, 2010; August 1, 1998; May 1, 1996;*

24 *Readopted Eff. July 1, 2020;*

25 *Amended Eff. September 1, 2023; August 1, 2022.*

1 15A NCAC 07H .0308 is amended as published with changes in 37:14 NCR 1003-1008 as follows:

2
3 **15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

4 **(a) For purposes of this Rule the following definitions apply:**

5 **(1) “Adverse impact,” “adverse impacts,” “adverse effects,” or similar formulations, are defined as an**
6 **effect or impact that is opposed or antagonistic to the goals of the Coastal Area Management Act as**
7 **found in G.S. 113A-102(b) and with the provisions of G.S. 113-229.**

8 **(2) “Significant” as used in this section includes consideration of both context and intensity. Context**
9 **means that the significance of an adverse impact or effect must be analyzed from several**
10 **perspectives that include society as a whole (human, national), the affected subregion of the North**
11 **Carolina coast, the local area and all directly and indirectly affected parties. Both short-and long-**
12 **term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be**
13 **considered in evaluating intensity:**

14 **(A) both beneficial and adverse impacts;**

15 **(B) the degree to which the proposed action affects public health or safety;**

16 **(C) unique characteristics of the geographic area;**

17 **(D) the degree to which the effects on the quality of the human environment are likely**
18 **to be controversial;**

19 **(E) the degree to which the possible effects on the environment are uncertain or**
20 **involve unique or unknown risks;**

21 **(F) the degree to which the action may establish a precedent for future actions;**

22 **(G) the degree to which the action is related to other actions with individually**
23 **insignificant but cumulatively significant impacts. Significance cannot be avoided**
24 **by terming an action temporary or by breaking it down into small component**
25 **parts;**

26 **(H) the degree to which the action may cause the loss or destruction of scientific,**
27 **cultural, historical, and environmental resources and;**

28 **(I) the impact is more than de minimus, that is, large enough to make a difference.**

29 **(a) (b) Ocean Shoreline Erosion Control Activities:**

30 (1) Use Standards Applicable to all Erosion Control Activities:

31 (A) All oceanfront erosion response activities shall be consistent with ~~the general policy~~
32 ~~statements in~~ 15A NCAC 07M .0200, 15A NCAC 7H .0308 and N.C.G.S. § 113A-115.1.

33 (B) Permanent erosion control structures may cause significant adverse impacts on the value
34 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,
35 therefore, unless specifically authorized under the Coastal Area Management Act, are
36 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, ~~groins~~ groins,
37 and breakwaters.

- 1 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront
2 properties without regard to the size of the structure on the property or the date of its
3 construction.
- 4 (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that
5 sustain **substantial** habitat for fish and wildlife species, as identified by State or federal
6 natural resource agencies during project review, unless mitigation measures are
7 incorporated into project design, as set forth in Rule .0306(h) of this Section.
- 8 (E) Project construction shall be timed to minimize adverse effects on biological activity.
- 9 (F) Prior to completing any erosion response project, all exposed remnants of or debris from
10 failed erosion control structures must be removed by the permittee.
- 11 (G) Permanent erosion control structures that would otherwise be prohibited by these standards
12 may be permitted on finding by the Division that:
- 13 (i) the erosion control structure is necessary to protect a bridge that provides the only
14 existing road access on a barrier island, that is vital to public safety, and is
15 imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
- 16 (ii) the erosion response measures of relocation, beach nourishment or temporary
17 stabilization are not adequate to protect public health and safety; and
- 18 (iii) the proposed erosion control structure will have no adverse impacts on adjacent
19 properties in private ownership or on public use of the beach.
- 20 (H) Structures that would otherwise be prohibited by these standards may also be permitted on
21 finding by the Division that:
- 22 (i) the structure is necessary to protect a **state State** or federally registered historic
23 site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B)
24 of this Rule;
- 25 (ii) the erosion response measures of relocation, beach nourishment or temporary
26 stabilization are not adequate and practicable to protect the site;
- 27 (iii) the structure is limited in extent and scope to that necessary to protect the site; and
28 (iv) a permit for a structure under this Part may be issued only to a sponsoring public
29 agency for projects where the public benefits outweigh the significant adverse
30 impacts. Additionally, the permit shall include conditions providing for mitigation
31 or minimization by that agency of significant adverse impacts on adjoining
32 properties and on public access to and use of the beach.
- 33 (I) Structures that would otherwise be prohibited by these standards may also be permitted on
34 finding by the Division that:
- 35 (i) the structure is necessary to maintain an existing commercial navigation channel
36 of regional significance within federally authorized limits;
- 37 (ii) dredging alone is not practicable to maintain safe access to the affected channel;

- 1 (iii) the structure is limited in extent and scope to that necessary to maintain the
2 channel;
- 3 (iv) the structure shall not have significant adverse impacts on fisheries or other public
4 trust resources; and
- 5 (v) a permit for a structure under this Part may be issued only to a sponsoring public
6 agency for projects where the public benefits outweigh the significant adverse
7 impacts. Additionally, the permit shall include conditions providing for mitigation
8 or minimization by that agency of any significant adverse impacts on adjoining
9 properties and on public access to and use of the beach.
- 10 (J) The Commission may renew a permit for an erosion control structure issued pursuant to a
11 variance granted by the Commission prior to 1 July 1995. The Commission may authorize
12 the replacement of a permanent erosion control structure that was permitted by the
13 Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the
14 Commission finds that:
- 15 (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- 16 (ii) there is no ~~practical~~ alternative to replacing the structure that will provide the same
17 or similar benefits as determined by DCM based on costs and engineering options;
18 and
- 19 (iii) the replacement structure will comply with all applicable laws and with all rules,
20 other than the rule or rules with respect to which the Commission granted the
21 variance, that are in effect at the time the structure is replaced.
- 22 (K) Proposed erosion response measures using innovative technology or design shall be
23 considered as experimental and shall be evaluated on a case-by-case basis to determine
24 consistency with 15A NCAC 07M .0200 and general and specific use standards within this
25 Section.
- 26 (2) Temporary Erosion Control Structures:
- 27 (A) Permittable temporary erosion control structures shall be limited to sandbags placed
28 landward of mean high water and parallel to the shore.
- 29 (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be
30 used to protect only imminently threatened roads and associated right of ways and
31 buildings and their associated septic systems. A structure is considered imminently
32 threatened if its foundation, septic system, or right-of-way in the case of roads is less than
33 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from
34 the erosion scarp or in areas where there is no obvious erosion scarp may also be found to
35 be imminently threatened when site conditions, such as a flat beach profile or accelerated
36 erosion, increase the risk of imminent damage to the structure.

- 1 (C) Temporary erosion control structures shall be used to protect only the principal structure
2 and its associated septic system, but not appurtenances such as pools, gazebos, decks or
3 any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion
4 setback requirement.
- 5 (D) Temporary erosion control structures may be placed waterward of a septic system when
6 there is no alternative to relocate it on the same or adjoining lot so that it is landward of or
7 in line with the structure being protected.
- 8 (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of
9 the structure to be protected except to align with temporary erosion control structures on
10 adjacent properties, where the Division has determined that gaps between adjacent erosion
11 control structures may result in an increased risk of damage to the structure to be protected.
12 The landward side of such temporary erosion control structures shall not be located more
13 than 20 feet waterward of the structure to be protected or the right-of-way in the case of
14 roads. If a building or road is found to be imminently threatened and at an increased risk
15 of imminent damage due to site conditions such as a flat beach profile or accelerated
16 erosion, temporary erosion control structures may be located more than 20 feet waterward
17 of the structure being protected. In cases of increased risk of imminent damage, the location
18 of the temporary erosion control structures shall be determined by the Director of the
19 Division of Coastal Management or the Director's designee in accordance with Part (A) of
20 this Subparagraph.
- 21 (F) Temporary erosion control structures may remain in place for up to eight years for a
22 building and its associated septic system, a bridge or a road. The property owner shall be
23 responsible for removal of any portion of the temporary erosion control structure exposed
24 above grade within 30 days of the end of the allowable time period.
- 25 (G) An imminently threatened structure or property may be protected only once, regardless of
26 ownership, unless the threatened structure or property is located in a community that is
27 actively pursuing a beach nourishment project or an inlet relocation or stabilization project
28 in accordance with Part (H) of this Subparagraph. Existing temporary erosion control
29 structures may be permitted for additional eight-year periods provided that the structure or
30 property being protected is still imminently threatened, the temporary erosion control
31 structure is in compliance with requirements of this Subchapter, and the community in
32 which it is located is actively pursuing a beach nourishment or an inlet relocation or
33 stabilization project in accordance with Part (H) of this Subparagraph. In the case of a
34 building, a temporary erosion control structure may be extended, or new segments
35 constructed, if additional areas of the building become imminently threatened. Where
36 temporary structures are installed or extended incrementally, the time period for removal

1 under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control
2 structure was installed. For the purpose of this Rule:

- 3 (i) a building and its septic system shall be considered separate structures,
- 4 (ii) a road or highway may be incrementally protected as sections become imminently
5 threatened. The time period for removal of each contiguous section of temporary
6 erosion control structure shall begin at the time that the initial section was
7 installed, in accordance with Part (F) of this Subparagraph.

8 (H) For purposes of this Rule, a community is considered to be actively pursuing a beach
9 nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-
10 115.1 if it:

- 11 (i) has been issued an active CAMA permit, where necessary, approving such
12 project; or
- 13 (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment
14 Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage
15 Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of
16 Engineers and a commitment of local or federal money, when necessary; or
- 17 (iii) has received a favorable economic evaluation report on a federal project; or
- 18 (iv) is in the planning stages of a project designed by the U.S. Army Corps of
19 Engineers or persons meeting applicable State occupational licensing
20 requirements and initiated by a local government or community with a
21 commitment of local or state funds to construct the project or the identification of
22 the financial resources or funding bases necessary to fund the beach nourishment,
23 inlet relocation or stabilization project.

24 If beach nourishment, inlet relocation, or stabilization is rejected by the sponsoring agency
25 or community, or ceases to be actively planned for a section of shoreline, the time extension
26 is void for that section of beach or community and existing sandbags are subject to all
27 applicable time limits set forth in Part (F) of this Subparagraph.

28 (I) Once a temporary erosion control structure is determined by the Division of Coastal
29 Management to be unnecessary due to relocation or removal of the threatened structure, it
30 shall be removed to the maximum extent practicable by the property owner within 30 days
31 of official notification from the Division of Coastal Management regardless of the time
32 limit placed on the temporary erosion control structure. If the temporary erosion control
33 structure is determined by the Division of Coastal Management to be unnecessary due to
34 the completion of a storm protection project constructed by the U.S. Army Corps of
35 Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization
36 project, any portion of the temporary erosion control structure exposed above grade shall
37 be removed by the property owner within 30 days of official notification from the Division

- 1 of Coastal Management regardless of the time limit placed on the temporary erosion control
2 structure.
- 3 (J) Removal of temporary erosion control structures is not required if they are covered by sand.
4 Any portion of the temporary erosion control structure that becomes exposed above grade
5 after the expiration of the permitted time period shall be removed by the property owner
6 within 30 days of official notification from the Division of Coastal Management.
- 7 (K) The property owner shall be responsible for the removal of remnants of all portions of any
8 damaged temporary erosion control structure.
- 9 (L) Sandbags used to construct temporary erosion control structures shall be tan in color and
10 ~~three 3~~ to ~~five 5~~ feet wide and ~~seven 7~~ to 15 feet long when measured flat. Base width of
11 the temporary erosion control structure shall not exceed 20 feet, and the total height shall
12 not exceed ~~six 6~~ feet, as measured from the bottom of the lowest bag.
- 13 (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- 14 (N) Existing sandbag structures may be repaired or replaced within their originally permitted
15 dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- 16 (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size
17 and in accordance with Rule .0312 of this Section.
- 18 (4) Beach Bulldozing. Beach bulldozing ~~(defined is defined)~~ as the process of moving natural beach
19 material from any point seaward of the vegetation line to create a protective sand dike or to obtain
20 material for any other ~~purpose)~~ ~~purpose~~ is ~~considered~~ development and may be permitted as an
21 erosion response if the following conditions are met:
- 22 (A) The area on which this activity is being performed shall maintain a slope of adequate grade
23 so as to not endanger the public or the public's use of the beach and shall follow the pre-
24 emergency slope as closely as possible. The movement of material utilizing a bulldozer,
25 front end loader, backhoe, scraper, or any type of earth moving or construction equipment
26 shall not exceed one foot in depth measured from the pre-activity surface elevation;
- 27 (B) The activity shall not exceed the lateral bounds of the applicant's property unless
28 permission is obtained from the adjoining land owner(s);
- 29 (C) Movement of material from seaward of the mean low water line will require a CAMA
30 Major Development and State Dredge and Fill Permit;
- 31 (D) The activity shall not increase erosion on neighboring properties and shall not have an
32 adverse effect on natural or cultural ~~resources;~~ resources as identified by the NC
33 Department of Natural and Cultural Resources.
- 34 (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well
35 as the threatened structure's foundations.
- 36 (b) Dune Protection, Establishment, Restoration and Stabilization.

- 1 (1) No development shall be permitted that involves the removal or relocation of primary or frontal
2 dune sand or vegetation that would adversely affect the integrity of the ~~dune~~ dune's function as a
3 protective barrier against flooding and erosion. Other dunes within the ocean hazard area shall not
4 be disturbed unless the development of the property is otherwise impracticable. Any disturbance of
5 these other dunes shall be allowed only to the extent permitted by this Rule.
- 6 (2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent
7 dune ridges and shall be of the same configuration as adjacent natural dunes.
- 8 (3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency
9 situations, be broadened or extended in an oceanward direction.
- 10 (4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is
11 minimized. The filled areas shall be replanted or temporarily stabilized until planting can be
12 completed.
- 13 (5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand
14 in the area in which it is to be placed.
- 15 (6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune
16 systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.
- 17 (7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or
18 tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard
19 AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present,
20 or the crest of a frontal dune.
- 21 (8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized
22 and alternative site locations exist to avoid dune impacts.

23 (c) Structural Accessways:

- 24 (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed
25 and constructed in a manner that ~~entails negligible alteration of~~ does not alter the primary or frontal
26 dune. Structural accessways shall not be considered threatened structures for the purpose of
27 Paragraph (a) of this Rule.
- 28 (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided
29 that:
 - 30 (A) The accessway is exclusively for pedestrian use;
 - 31 (B) The accessway is a maximum of six feet in width;
 - 32 (C) Except in the case of beach ~~matting for a local, State, or federal government's public access,~~
33 matting, the accessway is raised on posts or pilings of five feet or less depth, so that
34 wherever possible only the posts or pilings touch the dune, in accordance with any more
35 restrictive local, State, or federal building requirements. Beach ~~matting for a local, State,~~
36 ~~or federal government's public access~~ shall be installed at grade and not involve any
37 excavation or fill of the dune; and

1 (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

2 (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it
3 meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this
4 Paragraph. Public fishing piers are allowed provided all other applicable standards of this Rule are
5 met.

6 (4) In order to preserve the protective nature of primary and frontal dunes, a structural accessway ~~(such~~
7 ~~such~~ as a "Hatteras ~~ramp") ramp" may be provided for off-road vehicle (ORV) or emergency vehicle
8 access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden
9 sections fastened together, or other materials approved by the Division, over the length of the
10 affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the
11 dune's function as a protective barrier against flooding and erosion by not reducing the volume of
12 the dune.~~

13 (5) Structural accessways and beach matting may be constructed no more than six feet seaward of the
14 waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights
15 and emergency access along the beach. Structural accessways and beach matting are not restricted
16 by the requirement to be landward of the First Line of Stable and Natural Vegetation as described
17 in Rule .0309(a) of this Section. A local, State, or federal entity may install beach matting farther
18 seaward to enhance handicap accessibility at a public beach access, subject to review by the Wildlife
19 Resources Commission and the U.S. Fish and Wildlife Service to determine whether the proposed
20 design or installation will have an adverse impact on sea turtles or other threatened or endangered
21 species.

22 (d) Building Construction Standards. New building construction and any construction identified in ~~Rule~~ .0306(a)(5)
23 of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

24 (1) In order to avoid danger to life and property, all development shall be designed and placed so as to
25 minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any
26 building constructed within the ocean hazard area shall comply with relevant sections of the North
27 Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local
28 flood damage prevention ordinance as required by the National Flood Insurance Program. If any
29 provision of the building code or a flood damage prevention ordinance is inconsistent with any of
30 the following AEC standards, the more restrictive provision shall control.

31 (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if
32 round or eight inches to a side if square.

33 (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation
34 under the structure. For those structures so located on or seaward of the primary dune, the pilings
35 shall extend to five feet below mean sea level.

1 (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and
2 wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements
3 of this Part or shall be designed to break-away without structural damage to the main structure.
4

5 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
6 *Eff. June 1, 1979;*
7 *Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17,*
8 *1989;*
9 *Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*
10 *RRC Objection Eff. November 19, 1992 due to ambiguity;*
11 *RRC Objection Eff. January 21, 1993 due to ambiguity;*
12 *Amended Eff. March 1, 1993; December 28, 1992;*
13 *RRC Objection Eff. March 16, 1995 due to ambiguity;*
14 *Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*
15 *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*
16 *Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1,*
17 *2002;*
18 *Readopted Eff. December 1, 2020;*
19 *Amended Eff. July 1, 2023; August 1, 2022; December 1, 2021.*

1 15A NCAC 07M .0603 is amended as published with changes in 37:15 NCR 1047 as follows:

2

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

4 (a) It is the policy of the State of North Carolina that floating **Floating** structures shall not be allowed or permitted
5 within the public trust waters of the coastal area except in a marina permitted as development pursuant to the Coastal
6 Area Management Act of 1974.

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 ~~(d) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purpose
11 of this Rule, floating upweller systems are considered floating structures.~~

12 ~~(e) Floating upweller systems may be permitted as a platform at a private docking facility in accordance with 15A
13 NCAC 07H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 07H .0208(b)(5).~~

14

15 *History Note: Authority G.S. 113A-102; 113A-103; 113A-107; 113A-108; 113A-118; 119.2(a)(2); 113A-*

16 *119.2(a)(2); 113A-120(a)(8);*

17 *Eff. July 1, 1983;*

18 *Readopted Eff. January 1, 2023;*

19 *Amended Eff. September 1, 2023.*