



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

MEMORANDUM

CRC-20-20

TO: N.C. Coastal Resources Commission
FROM: Rebecca Ellin, Coastal Reserve Program Manager
DATE: August 28, 2020
SUBJECT: Amendments to 15A NCAC 07O, N.C. Coastal Reserve

As part of the Legislative Periodic Review and Expiration of Existing Rules process (G.S. 150B-21.3A), 5 of the original 7 sections of the N.C. Coastal Reserve rules, [15A NCAC 07O](#), were determined to be “necessary with substantive public interest” by the Rules Review Commission and Joint Legislative Administrative Procedures Oversight Committee in 2017 and must be readopted by November 30, 2021. These sections include 15A NCAC 07O.0101, .0103, .0104, .0201, and .0202. The remaining two sections, 15A NCAC 07O.0102 and 15A NCAC 07O.0105, were determined to be “necessary without substantive public interest” and should remain in effect without further action.

15A NCAC 07O has remained largely unchanged since it was first adopted in 1986. The Division is proposing rule changes during this review based on staff experiences managing the Reserve sites and programs, and based on feedback from the Reserve’s local advisory committees. The amendments to 15A NCAC 07O presented in this memorandum will satisfy the periodic review and re-adoption requirements, and address priority updates to enhance clarity of existing rules and address issues and gaps to ensure effective management of the Reserve program and sites in accordance with G.S. 113A-129.1-3.

The Reserve’s rules are established by the N.C. Department of Environmental Quality. In accordance with 15A NCAC 07O.0104 and G.S. 113A-129.2(b), the Reserve’s ten local advisory committees and the N.C. Coastal Resources Commission have participated throughout the periodic review process for 15A NCAC 07O, as follows:

- The classification of each rule found in 15A NCAC 07O, as described in paragraph 1 of this memorandum, was informed by the local advisory committees (Spring 2016), N.C. Coastal Resources Commission (July 2016), and a 60-day public comment period (September-November 2016). The Department supported staff’s recommendation based on this input and worked with the Rules Review Commission to receive the final report on 15A NCAC 07O classifications in 2017.
- The Department’s request for a re-adoption timeline of November 30, 2021 for 15A NCAC 07O was approved by the Rules Review Commission in 2018.



- The re-adoption process began with preliminary discussions with the local advisory committees in 2018 on priority topics to consider for rule updates, informed by suggestions from the committees during the classification process. Input from the committees on draft rule amendments was sought at their December 2019 and January 2020 meetings. That input, and internal Division review informed an updated draft. Input was again sought from the local advisory committees on the updated draft in August 2020.

The amendments presented in this memorandum reflect this process. Proposed substantive changes to 15A NCAC 07O include:

- The Coastal Area Management Act, the Coastal Reserve’s authorizing state statute (G.S. 113A-129.1-3), was added as an authority to all rule sections and authorities were updated as needed.
- Language in 15A NCAC 07O.0101(4), .0102(4), and .0202(2) was revised to focus on traditional uses and other uses for two reasons:
 - Clarify that “traditional uses” are public trust uses as defined in G.S. 1-45.1 and referenced in the Coastal Area Management Act (G.S. 113A-129.1-2). Both statutes list public trust uses as fishing, hunting, navigation, and recreation. “Traditional uses” is now defined in 15A NCAC 07O.0102 (4) and lists those four uses, including recreation and fishing.
 - Remove the phrase “traditional recreational uses” in 15A NCAC 07O.0101(4) and 15A NCAC 07O.0202(2) which was not defined, and staff, users, and local advisory committees found challenging to interpret consistently over time. Rule language now focuses on “traditional uses” as defined above.

Importantly, this language revision does not change the type of uses that are currently allowed to occur at Reserve sites.

- The N.C. Coastal Resources Commission was included as a party the Division shall seek input from on revisions to the Reserve management plan in 15A NCAC 07O.0201.
- A number of changes were made to 15A NCAC 07O.0202 to enhance clarity and address rule issues and gaps.
- 15A NCAC 07O.0203, “special activity authorization,” is proposed as a new rule section to address requests for using Reserve sites outside of the defined purposes of research, education, and compatible traditional uses. This rule will provide a consistent mechanism by which staff receives and reviews such requests.

As the Coastal Area Management Act (G.S. 113A-129.2(b)) states that the Department will consult with and seek advice of the N.C. Coastal Resources Commission in its administration of the Coastal Reserve, **the Division is requesting the Commission’s support of staff’s proposed amendments for re-adoption of 15A NCAC 07O to inform its recommendation to the Department.**



SUBCHAPTER 70 - NORTH CAROLINA COASTAL RESERVE

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 070 .0101 STATEMENT OF PURPOSE

The principal purposes of the North Carolina Coastal Reserve and supporting programs are to:

- (1) preserve coastal ecosystems representative of the various biogeographic regions and typologies in North Carolina and to make them available for continuous future study of the processes, functions, and influences which shape and sustain the coastal ecosystems;
- (2) provide new information on coastal ecosystem processes to decisionmakers as a basis for the promotion of sound management of coastal resources;
- (3) provide a focal point for educational activities that increase the public awareness and understanding of coastal ecosystems, effects of humans ~~man~~ on them, and the importance of ~~the~~ coastal systems to the state and the Nation;
- (4) accommodate traditional ~~recreational activities uses, commercial fishing,~~ and other uses of the Reserve as long as they do not disturb the Reserve environment and are compatible with the research and educational activities within the Reserve components taking place there.

*History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143B-10;
Eff. July 1, 1986;
Amended Eff. April 1, 1988.*

15A NCAC 070 .0102 DEFINITIONS AS USED IN THIS SUBCHAPTER

Definitions as used in this Subchapter are:

- (1) "Coastal Reserve" means those coastal land and water areas, which include land and water portions of an estuary and adjacent transitional areas and uplands, set aside as a natural field laboratory and classroom to be maintained in their natural state to provide for long-term opportunities for research, education and compatible traditional uses ~~recreation~~ and enjoyment of natural and scenic beauty. The Coastal Reserve includes the North Carolina National Estuarine Research Reserve.
- (2) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where sea water is measurably diluted with fresh water derived from land drainage.
- (3) ~~"Research Reserve" means a group of areas or components, each of which may include all or the key land and water portion of an estuary and adjacent transitional areas and uplands, constituting to the extent feasible a natural unit, set aside as a natural field laboratory to provide long term opportunities for research, education, and interpretation of the ecological relationships within the area. The Coastal Reserve includes the North Carolina National Estuarine Research Reserve.~~
- (4) "Reserve" means any area designated pursuant to this Subchapter.
- (5) ~~"Traditional uses" means public trust uses as defined in G.S. 1-45.1, including fishing, hunting, navigation, and recreation.~~

*History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143B-10;
Eff. July 1, 1986;
Amended Eff. April 1, 1988.*

15A NCAC 070 .0103 RESPONSIBILITIES: DUTIES OF THE COASTAL RESERVE PROGRAM

The Coastal Reserve Program of the Division of Coastal Management shall be responsible for managing and protecting the North Carolina Coastal Reserve; ~~for~~ promoting and coordinating research and educational programs at the components while allowing for compatible traditional uses; ~~for~~ maintaining a management plan for the Reserve; ~~for~~ maintaining cooperative agreements with scientific, educational, and resource management agencies and private citizens that will assist in the management of the Reserve; and ~~for~~ providing new information on coastal processes to coastal management decisionmakers.

*History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143B-10;
Eff. July 1, 1986;
Amended Eff. April 1, 1988.*

15A NCAC 070 .0104 STATE AND LOCAL COASTAL RESERVE ADVISORY COMMITTEES

Advisory committees shall be established for each ~~individual~~ Reserve component. ~~The committees and~~ shall advise ~~the~~ Reserve ~~staff coordinator~~. Members of the committees shall include researchers, educators, managers, partner agencies and organizations, and citizens that use or are affected by the Reserve and its components. The committees shall be appointed by the Secretary of the Department of Environmental Quality, Health, and Natural Resources.

*History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143B-10;
Eff. July 1, 1986;
Amended Eff. May 1, 1990; April 1, 1988.*

15A NCAC 070 .0105 RESERVE COMPONENTS

(a) The North Carolina Coastal Reserve includes the following components:

- (1) Zeke's Island;
- (2) Rachel Carson;
- (3) Currituck Banks;
- (4) Masonboro Island;
- (5) Permuda Island;
- (6) Buxton Woods;
- (7) Bald Head Woods;
- (8) Kitty Hawk Woods;
- (9) Bird Island; and
- (10) Emily and Richardson Preyer Buckridge.

The North Carolina National Estuarine Research Reserve includes components in Subparagraphs (1) - (4) of this Rule.

(b) Detailed boundary maps for each component are maintained and available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557.

*History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143B-10;
Eff. July 1, 1986;
Amended Eff. February 1, 2006; April 1, 1999; August 1, 1991; April 1, 1988.*

SECTION .0200 - MANAGEMENT: USE AND PROTECTION OF THE NORTH CAROLINA COASTAL RESERVE

15A NCAC 070 .0201 MANAGEMENT PLAN

The Division of Coastal Management shall prepare a management plan for the Reserve. The management plan shall contain specific policies for research, education, natural resource management, and traditional uses at each component. The Secretary of the Department of Environmental ~~Quality, Health, and Natural Resources~~ shall approve the management plan and its revisions. The Division of Coastal Management shall seek input from the local advisory committees, the Coastal Resources Commission, and the public on revisions to the management plan. The Division of Coastal Management shall monitor and manage ~~the~~ Reserve components and report to the Secretary violations of the approved plan and any other situations that may be harmful to the natural resources of the Reserve.

History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143-341; 143-342; 143B-10; Eff. July 1, 1986; Amended Eff. May 1, 1990; April 1, 1988.

15A NCAC 070 .0202 RESERVE USE REQUIREMENTS

The following use requirements shall apply to ~~all~~ the lands and waters within the boundaries of the components of the Reserve:

- (1) ~~The essential~~ natural character of the Reserve shall be maintained.
- (2) Traditional ~~recreational~~ uses within each component shall be allowed to continue as long as the activities are consistent with 15A NCAC 070.0101(4). ~~do not disrupt the natural integrity of the Reserve or any research or educational projects.~~ Incompatible traditional uses are prohibited and shall include:
 - (a) fishing, hunting, or trapping activities not allowed by federal, state, and local rules;
 - (b) target shooting; and
 - (c) mechanical hydraulic-clam dredging, within Reserve boundaries;
 - (d) ~~use of vehicles off designated corridors at components where vehicles are allowed for upland transportation according to the management plan; and~~
 - (e) ~~production of noise disruptive to local wildlife and the aesthetic enjoyment of the Reserve as a natural area.~~
- (3) ~~No user shall~~ It is prohibited to disturb a ~~an~~ authorized research or natural resource monitoring project or research equipment in place at the Reserve.
- (4) ~~Camping or any form of habitation, whether on the uplands, or wetlands of the Reserve is prohibited, or waters within Reserve boundaries, shall not be allowed unless written permission is posted by the Division of Coastal Management except on the uplands at the Masonboro Island Reserve, where camping is allowed for no more than two consecutive nights.~~
- (5) ~~Fires are prohibited except at the Masonboro Island Reserve on open sand and away from vegetation.~~
- (5) ~~Personal property not authorized by the management agency may not be placed within the boundaries of the Reserve for more than two consecutive days.~~
- (6) ~~Users of the Reserve shall not~~ It is prohibited to disturb or remove any live animals, except those allowed by local or state hunting, trapping, and fishing rules as they apply to the Reserve, or vegetation, fungi, or cultural resources within the Reserve unless such action is part of a research or educational project approved authorized by the management agency Division of Coastal Management.
- (7) Persons wishing to engage in scientific research and monitoring, or collection of natural and cultural materials for scientific purposes within the Reserve shall first secure written permission authorization from the management agency Division of Coastal Management prior to beginning said activity. Written authorization does not eliminate the need to obtain any other federal, state, or local authorization, nor to abide by regulations adopted by any federal, state, or local agency. Application for authorization shall be made by contacting Reserve staff at the Division of Coastal Management.
- (8) ~~No activity shall be allowed which might pollute any stream or body of water in the Reserve. Acts of pollution shall include:~~
 - (a) ~~Deposition of solid materials not indigenous to the local coastal ecosystem; and~~
 - (b) ~~Discharge of liquids other than uncontaminated estuarine water.~~
- (8) It is prohibited to produce noise disruptive to local wildlife or the aesthetic enjoyment of the Reserve as a natural area.
- (9) ~~No other~~ It is prohibited to conduct or engage in acts or uses which are detrimental to the maintenance of

the Reserve property in its natural condition ~~shall be allowed~~ including, ~~but not limited to~~, disturbances of the soil, mining, commercial or industrial uses, timber harvesting, ditching and draining, and deposition of waste materials. Disposal of dredge spoil materials within existing U.S. Army Corps of Engineers easements at Reserve components may be allowed with authorization from the U.S. Army Corps of Engineers and N.C. Department of Administration, in consultation with the Division.

- (10) The following requirements pertain to littering, dumping, deposition, and pollution:
- (a) It is prohibited to leave any personal property unattended within the boundaries of any Reserve component longer than 24 hours, at which point it shall be considered litter in accordance with G.S. 14-399 and subject to removal at the owner's expense and/or prosecution.
 - (b) It is prohibited to abandon or allow to be abandoned any vessels of any kind within the boundaries of any Reserve component. Vessels not removed within 30 days will be considered litter in accordance with G.S. 14-399 and subject to removal at the owner's expense and/or prosecution.
 - (c) It is prohibited to dispose of any litter, as described in G.S. 14-399, within the boundaries of any Reserve component.
 - (d) It is prohibited to dump, deposit, place, or allow to be abandoned any autos, appliances, trash, debris, garbage, shell or discarded material(s) of any kind within the boundaries of any Reserve component.
 - (e) It is prohibited to conduct or engage in activities that pollute any land, wetland, stream, creek or other body of water within the boundaries of any Reserve component, in accordance with G.S. 75A-10, 76-40.
- (11) The following requirements pertain to vehicles and parking:
- (a) Motorized vehicles as defined in G.S. 20-4.01 (23) are prohibited within the boundaries of any Reserve component while not actively engaged in a Reserve-based activity, Reserve business, or an activity authorized by the Division of Coastal Management.
 - (b) Motorized vehicles are prohibited outside of designated corridors within the boundaries of Reserve components where vehicles are allowed for upland transportation according to the management plan.
 - (c) It is prohibited to allow a motorized vehicle to block traffic, gates, driveways or emergency vehicle access.
 - (d) It is prohibited to park a motorized vehicle within the boundaries of any Reserve component overnight, or allow a motorized vehicle to remain anywhere within the boundaries of any Reserve component unattended or abandoned for longer than 12 hours except at the Currituck Banks Reserve parking lot where there is a 2 hour limit.
 - (e) The Division or its agents may immobilize or tow any motorized vehicle that is in violation of this rule at the owner's expense.
 - (f) Non-motorized vehicles are prohibited where the use of the vehicle will damage natural resources, on pedestrian trails not designated for this use, and in any areas of Reserve components not customarily used for such purpose.
- (12) The Division staff and its authorized agents are exempt from this rule when engaged in management activities, such as incorporation of natural materials, beneficial use of dredged materials, or other engineering practices that protect, restore, or enhance the natural character of the Reserve.

*History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 113-264; 143B-10;
Eff. July 1, 1986;
Amended Eff. April 1, 1999; December 1, 1991; April 1, 1988.*

15A NCAC 070.0203 SPECIAL ACTIVITY AUTHORIZATION

- (1) Written authorization is required for organized events, commercial activities and other special activities or uses within the boundaries of any Reserve component not included in the primary uses of research, education, and compatible traditional uses.
- (2) A request for written authorization shall be made by contacting Reserve staff at the Division of Coastal Management. Written authorization does not eliminate the need to obtain any other federal, state, or local authorization, nor to abide by regulations adopted by any federal, state, or local agency.
- (3) A request for written authorization shall be made a minimum of 30 days prior to and up to one year in advance of the activity or use. The request shall include the name, address and phone number of the applicant; the name of the organization (if any); the name, address and phone number of a contact person; the date, time, duration, nature and location of the proposed activity or use; the estimated number of persons

- expected to participate; the equipment to be used during the activity; and other information necessary to allow for evaluation of an application.
- (4) The Reserve Manager or designee shall provide written authorization unless one or more of the following apply:
- (a) A prior request for a written authorization for a similar activity or use has been made and granted; and the activities or uses authorized by the written authorization do not allow multiple activities or uses of that location during the same timeframe;
 - (b) The activity or use will threaten the health, safety and welfare of persons using the Reserve;
 - (c) The activity or use is of such a nature or duration that it cannot be conducted or performed in the location due to: (i) the potential for damage to the Reserve or facilities; (ii) interference with research or education programs, or site management activities of the Reserve; (iii) disturbance of wildlife, habitats, or other natural features of the Reserve; or (iv) burden placed on public agencies by the activity;
 - (d) The activity or use conflicts with the principal purposes of the Reserve as defined in 15A NCAC O70.0101; or
 - (e) The activity or use does not comply with the Reserve use requirements found in section 15A NCAC O70.0202 or dedicated nature preserve letters of allocation under G.S. 143B Article 2 Part 42 Nature Preserves Act or would constitute a violation of other applicable law or regulation.
- (5) The written authorization may contain conditions consistent with protection and use of the Reserve for the purposes for which it is operated.
- (6) The authorized user shall not transfer or assign authorization, or grant any part of an authorized use, to any person not indicated on the written authorization request.
- (7) If a request is denied, the applicant shall be informed in writing, with the reason(s) for the denial.
- (8) Participants engaged in activities authorized under this rule shall also be subject to Reserve rules.
- (9) A written authorization only authorizes uses or activities that conform to the terms contained in the authorization or in applicable federal, state, and local rules and existing laws. Violation of the terms and conditions of a written authorization, including engaging in any activities or uses not expressly authorized, shall result in revocation of the authorization by the Division of Coastal Management. Violations shall be subject to any other civil and/or criminal penalties prescribed by law.

History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 133-264; 143B-10;