

NC COASTAL RESOURCES COMMISSION (CRC)

**February 13-14, 2018
Sea Trail Convention Center
Sunset Beach, NC**

Present CRC Members

Renee Cahoon, Chair
Neal Andrew, Vice-Chair
Greg Lewis, Second Vice-Chair

Larry Baldwin
Rick Catlin
Robert High
Doug Medlin

Phil Norris
Russell Rhodes
Jamin Simmons

Present CRAC Members

Greg Rudolph, Chair
Spencer Rogers, co-Vice Chair
Bobby Outten, co-Vice Chair
John Brodman
David Kellam
Seth Laughlin
Kris Noble
Kathleen Riely
Todd Roessler
Debbie Smith
Dave Weaver

Present from the Office of the Attorney General

Mary L. Lucasse

Present from the Department of Environmental Quality, Office of the General Counsel

Christine A. Goebel

CALL TO ORDER/ROLL CALL

Renee Cahoon called the meeting to order at 3:15 p.m. on February 13, 2018 reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Denise Gibbs and Bill White were absent. Chair Cahoon stated that she knows the attorney representing the Fohs in their variance request, but has consulted with

CRC Counsel and does not believe there is a conflict with this agenda item. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR COMMENTS

Chair Cahoon welcomed Dr. Devon Eulie and her students from UNCW and thanked them for their attendance.

VARIANCES

Heasley (CRC VR 17-03), Oak Island, Oceanfront Setback

Christine Goebel, Esq./ Brooks Surgan, DCM

Richard Heasley, pro se

Brooks Surgan, DCM Field Representative, presented an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and acknowledged Petitioner Mr. Richard Heasley, who was present and represent himself. Ms. Goebel reviewed the stipulated facts of this variance request and stated Petitioners Richard and Valerie Heasley own a vacant oceanfront lot located at 4017 East Beach Drive in the middle portion of Oak Island. Petitioners were denied a Minor Permit seeking to construct a single-family residence, a deck and a pool. Oak Island's CAMA Local Permit Officer denied the application as the proposed swimming pool is oceanward of the static line.

Richard Heasley reviewed the stipulated facts which he contends supports the granting of this variance request. Mr. Heasley stated he would be willing to accept an alternative site plan which pulls the house landward to the 15' street side setback, but the static line bisects the pool in half with six feet of the pool and six feet of the concrete apron waterward of the static line.

Greg Lewis made a motion to waive the 7J procedural requirement that Petitioner must first seek a local variance. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Neal Andrew made a motion that Petitioner has shown that strict application of the applicable development rules, standards, or orders issued by the Commission will cause the petitioner an unnecessary hardship. Larry Baldwin seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Neal Andrew made a motion that Petitioner has not shown that any hardships are a result from conditions peculiar to the Petitioner's property. Greg Lewis seconded the motion. The motion passed with nine votes in favor (Rhodes, High, Medlin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris) and one opposed (Baldwin).

Neal Andrew made a motion to support staff's position that hardships result from actions taken by petitioner. Greg Lewis seconded the motion. The motion passed with nine votes in favor (Rhodes, High, Medlin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris) and one opposed (Baldwin).

Neal Andrew made a motion that petitioner has not shown that the variance requested will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and will preserve substantial justice. Greg Lewis seconded the motion. The motion passed with eight votes in favor (Rhodes, High, Medlin, Cahoon, Andrew, Lewis, Simmons, Norris) and two opposed (Baldwin, Catlin).

This variance request was denied.

**Sandy Court Beach, LLC/Fohs (CRC VR 18-01), Nags Head, Oceanfront Setback
Christine Goebel, Esq./ Frank Jennings, DCM
Charles Evans, Esq.**

Frank Jennings, DCM District Manager, presented an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and acknowledged Attorney Charles Evans, who was present and represented petitioner. Ms. Goebel reviewed the stipulated facts of this variance request and stated Petitioner Sandy Beach Court, LLC owns a residence at 9913 Sand Court in the South Nags Head area of the Town of Nags Head which is subject to the static line following a large-scale beach nourishment project in 2011. Petitioner filed a CAMA Minor Permit application seeking to construct an addition to the bottom floor of the piling-supported residence underneath the bump-out on the top floor. The Town of Nags Head's CAMA Local Permitting Officer denied Petitioner's application as the proposed addition does not meet the applicable 150' setback from the static line.

Mr. Charles Evans, Kellogg and Evans, P.A., reviewed the stipulated facts which petitioner contends supports the granting of the variance request. Mr. Evans stated petitioners wish to build a handicap accessible bathroom underneath the existing footprint of the house. There will be no increase in the footprint of the house.

Neal Andrew made a motion that Petitioner has shown that strict application of the applicable development rules, standards or orders issued by the Commission will cause the petitioner an unnecessary hardship, Larry Baldwin seconded the motion. The motion passed with nine votes in favor (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons) and one opposed (Norris).

Neal Andrew made a motion that Petitioner has shown that hardships result from conditions peculiar to the petitioner's property. Larry Baldwin seconded the motion. The motion passed with eight votes in favor (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Catlin, Simmons) and two opposed (Lewis, Norris).

Neal Andrew made a motion that Petitioner has shown that hardships do not result from actions taken by the petitioner. Larry Baldwin seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Neal Andrew made a motion that the variance request will be consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public

safety and welfare; and preserve substantial justice. Larry Baldwin seconded the motion. The motion passed with eight votes in favor (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin) and two opposed (Simmons, Norris).

This variance request was granted.

LEGAL UPDATES

Update on Litigation of Interest to the Commission

Mary Lucasse

Mary Lucasse, CRC Counsel, reviewed the CRC and DCM cases which are currently active and provided the Commission with a summary of the contested cases, third party hearing requests, petitions for judicial review, variances and land use plan certifications from 2017. *(handout provided and available from DCM)*

Riggings Annual Report & Staff Response (CRC 18-19)

Christine Goebel

On December 5, 2017, the Riggings Homeowners Inc. ("HOA") submitted its second annual update as required by the variance granted by the Commission on December 11, 2015. The Division of Coastal Management's response was submitted February 1, 2018. Following a robust discussion regarding the next steps the HOA should consider as it works to address erosion at the Site before the sandbags are required to be removed in 2020, the Commission directed counsel to prepare a letter to the HOA with suggestions for it to explore in 2018. *(March 5, 2018 letter to HOA available from DCM)*

MINUTES

Neal Andrew made a motion to approve the minutes of the November 2017 Coastal Resources Commission meeting. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Catlin, High, Lewis, Medlin, Norris, Rhodes, Simmons).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

DEQ Assistant Secretary Sheila Holman, who regularly attends these meetings was unable to attend. It is also good to be back in Sunset Beach and in Brunswick County. Most of all, it is good to be back in the Division of Coastal Management on a full-time basis. As many of you know, I returned to my DCM office at the beginning of the New Year. Steve Murphey has replaced me as director of the Division of Marine Fisheries. Steve has had a long career in fisheries management, he is well-respected by the staff and the public, and I know he will do a great job. It was quite an experience working at DMF for the past two years. I learned a great deal about our fisheries and the way they are managed, and I made a lot of new friends along the way. Going forward I think we will have an even stronger collaboration between DCM and DMF. I just cannot say enough about how well DCM functioned under Mike Lopazanski's leadership. The staff at DCM continued to step up, get the job done well, and supported me both personally and professionally, and for that I will forever be grateful. I also wanted to say that I appreciated the Commission's support over those years. My priorities for the coming year are to

get back out to the coast to meet with community leaders and hear about your issues. I spent Monday touring Brunswick Towne and visiting with officials in Ocean Isle Beach to examine permitting issues and get feedback on their minor permitting program. I hope to be coming soon to a shoreline near you. My other major priority is that I want to focus on continuing needs and potential improvements in DCM's operations. We have taken some serious budget hits over the years, and I plan to evaluate how we are using our resources to make sure that we are not overloading staff, that we are keeping accurate paper and electronic records, making consistent regulatory calls, and streamlining our procedures wherever possible.

LEGISLATIVE UPDATE

The primary legislative request we will be making in the 2018 session is for an extension of time for the Chair to consider third-party appeals of permits. CAMA currently only provides a 15-day window to review these appeals, which can be complex. The Chair and CRC counsel sometimes only have a few days to review the staff's response and formulate a decision. We hope to extend that to a 30-day review window. There is no automatic stay on permits that are appealed. We will also be working with DMF and the Department to provide comments on legislation related to shellfish leases, which we anticipate will be forthcoming.

REGULATORY

On the regulatory side, we saw slightly higher permit activity in 2017 as compared to 2016. For example, the number of Major Permit decisions and General Permits issued for the last six months of 2017 both went up by just under 5% relative to the same period in 2016. Additionally, oceanfront and inlet management projects continue to take up significant amounts of staff time and effort. Staff continue working with local governments and other stakeholders on the development of beach nourishment, terminal groin, and other oceanfront erosion response projects. Projects that we are currently working on include the terminal groin proposal for the Town of Holden Beach and the Bogue Banks programmatic, long-term beach management project. Notable permit actions since your November meeting include the issuance of a permit to the NC Department of Transportation for infrastructure improvements at the Ferry Facilities at Silver Lake and Hatteras Island, issuance of a permit to the Town of Varnamtown for the renovation of an existing public boat ramp facility, and the issuance of a permit to East Carolina University's Coastal Studies Institute for the construction of 10 oyster reef breakwaters in the Croatan Sound.

Periodic Rules Review – CRC Rules

Both the Rules Review Commission (RRC) and the Joint Legislative Administrative Procedures Oversight Committee approved the rules review report for all 226 of the Commission's rules on January 25, 2017. Staff will be reviewing the rules for minor changes to correct inconsistencies for your review and will be working with the Rules Review Commission staff to establish a timeline for re-adoption.

POLICY & PLANNING

Land Use Plans

Pursuant to S.L. 2017-209, the Commission approved delegation of land use plan certification to the Division at your November meeting. The Division has since received two land use plans for certification, the Town of Emerald Isle and the Town of Windsor. On January 24, 2018, the Division found that:

- The plans met the substantive requirements outlined within your 7B Land Use Planning Requirements;
- There are no conflicts evident with either state or federal law or the State's Coastal Management Program; and
- The elected bodies of the Towns provided opportunity for the public to provide written comment following local adoption of the plan (as required by N.C.G.S. § 113A-110 and 15A NCAC 7B .0802 and .0803).
- For these reasons, the Town of Emerald Isle and the Town of Windsor requests for certification of their land use plans were granted.

Public Access

DCM has notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2018-19 fiscal year. Local governments are invited to apply for funding for projects that are anticipated to begin after November 2018 and to be completed within 18 months. DCM estimates that approximately \$1 million dollars will be available for public beach and coastal waterfront access projects in FY 2018-19. Pre-applications are due by April 9, 2018.

Agricultural Drainage

As we've reported in the past, the Division initiated a project to assist Hyde County with ongoing coastal resiliency efforts, including overcoming obstacles to effective agricultural drainage. A few years ago, we launched a new steering committee with stakeholders from Hyde County, DCM and other regulatory agencies to determine the best way to accomplish this goal. During this process, several ideas were identified that would benefit Hyde County, including:

- Designating a person to take the lead on County drainage related projects;
- Identifying and developing drainage districts;
- Coordinating with regulatory agencies to develop a process that would assist the county in ditch Clearing and Snagging projects; and
- Creating a guidance document to assist in acquiring permits.

To date, Hyde County has hired a Water and Flood Control Coordinator to oversee all drainage related projects in the county. The county currently has seven formal drainage districts and is looking at ways to improve existing infrastructure within those established districts as well as establishing new drainage districts. Hyde County has also been aggressively pursuing annual Stream Debris Removal funding and is coordinating with the regulatory agencies to clear and snag critical drainage canals. Several projects are now moving forward as a result of this coordination. The final recommendation was the development of the guidance document which has been completed and is on the back table if anyone would like to view it. It is also on our website for download. I am proud of this collaborative work, in particular the efforts of David Moye, Kris Noble, Jonathan Howell, Steve Trowell, Mike Lopazanski, and others at DCM. Jonathan reports that Hyde Co. is also pleased with the outcomes of this effort, and that other local governments may look to use Hyde County as a model for ways to leverage different resources to help with their own drainage issues.

Coastal Reserves

The application period for citizens and community organizations to join the Reserves' Local Advisory Committees closed on February 5, appointments will be made by the Secretary of

DEQ. The Reserve's newsletter was published last week and highlights recent program activities. Some upcoming events include:

- Registration for Summer Science School, in partnership with the NC Maritime Museum in Beaufort, opens February 18. Reserve Education staff will lead programs for students ranging from Preschool to 10th grade.
- The Coastal Training Program and the Division's Clean Marina Program are hosting two upcoming Clean Marina workshops for marina operators and workers to learn about environmentally sensitive practices.
- On March 24, volunteers will help install enclosures to protect crucial nesting habitat on the Masonboro Island Reserve as shorebird nesting season begins April 1
- In April, we will host a Citizen Science Presentation at UNCW to inform the community about research projects at the Masonboro Island Reserve that citizens can participate in.
- Also in April, we will host a Workshop for Real Estate Professionals in Beaufort, where participants will learn about the use of living shorelines and other methods for erosion control, including the permitting process and best practices for use of marsh plants and oyster shell.
- The 5th Annual Terrapin Tally Training is on April 14, 10am-12pm, where the Coastal Reserve & NC Wildlife Resources Commission have teamed up to estimate diamondback terrapin populations using citizen science. Participants are needed to kayak designated routes along the Masonboro Island Reserve and document terrapin sightings.
- And last, we are co-hosting an Adaptation Planning for Coastal Communities workshop from April 17-18 in Beaufort with NOAA's Office for Coastal Management. This course is for planners, public works staff, floodplain managers, hazard mitigation planners, emergency managers, and coastal resource managers to gain practical skills for incorporating adaptation strategies. Continuing education credits will be offered.

Staffing News

We are excited to welcome Susan Day as our office manager in the Morehead City office. Susan, who comes to us from the Division of Marine Fisheries, began work at DCM this week. She replaces Ronda Bennett, who retired at the end of last year. Rodney Guajardo, GIS Specialist, has taken a position with NOAA at the Beaufort Lab. We wish him our very best in this new endeavor. Seasonal internship and technician positions are open for 2018 at the Reserve's Beaufort and Wilmington offices. See the Reserve's website for details.

CRAC REPORT

Bobby Outten stated the CRAC reviewed recommendations and expertise for considering new members. The CRAC recommends the appointment of Frank Heath, Ike McRee, and Rhett White to the CRAC. If these recommendations are approved there will still be two vacancies on the CRAC.

Larry Baldwin made a motion to appoint Frank Heath, Ike McRee, and Rhett White to the Coastal Resources Advisory Council. Rick Catlin seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Mr. Outten stated the CRAC discussed the current rules which require a variance for ocean outfalls. This is a recurring problem. The CRAC discussed several options. DCM staff will bring

back language based on the CRAC's proposals at the next meeting. The CRAC also discussed extending dredge windows. DCM staff will schedule interagency meetings to discuss the possibility of extending the windows and will report back. Lastly, the CRAC discussed stormwater issues in the 20 coastal counties and will continue these discussions at the next meeting.

ACTION ITEMS

Fiscal Analysis 7H .0308 & 7K .0103 – Dune Rules (CRC 18-01)

Tancred Miller

Tancred Miller stated staff prepared the required fiscal analysis for these amendments and did not find any fiscal impacts. OSBM has reviewed staff's analysis and agreed the proposed amendments have little to no impact on state or local governments and no substantial economic impact.

Neal Andrew made a motion to approve the fiscal analysis for 15A NCAC 7H .0308 and 7K .0103 for public hearing. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Fiscal Analysis 7H .0209 – Coastal Stormwater Correction (CRC 18-03)

Tancred Miller

Tancred Miller stated staff prepared the required fiscal analysis for this amendment and did not find any fiscal impacts. OSBM has reviewed staff's analysis and determined the proposed amendments have little to no impact on state or local governments and no substantial economic impact.

Neal Andrew made a motion to approve the fiscal analysis for 15A NCAC 07H .0209 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Fiscal Analysis 7K .0208 – Single-Family Residences Exempted (CRC 18-02)

Daniel Govoni

Daniel Govoni stated staff does not anticipate any economic impacts as a result of the proposed amendments. These amendments will have no impact on Department of Transportation projects, local governments or the federal government. DEQ and OSBM have reviewed the fiscal analysis and determined the proposed amendments have little to no impact on state or local governments and no substantial economic impact.

Neal Andrew made a motion to approve the fiscal analysis for 15A NCAC 7K .0208 for public hearing. Doug Medlin seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

Fiscal Analysis 7B Land Use Planning Requirements (CRC 18-04)

Rachel Love-Adrick

Rachel Love-Adrick stated the fiscal analysis prepared by the Division has been approved by DEQ and OSBM. These amendments will have no impact on NCDOT or private property owners and a positive impact on local governments and the Division.

Greg Lewis made a motion to approve the fiscal analysis for 15A NCAC 7B .0802 and 7B .0803. Neal Andrew seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

**Amendments to 7B .0802 Public Hearing and Local Adoption Requirements (CRC 18-10)
Rachel Love-Adrick**

Rachel Love-Adrick stated this amendment is necessary since the passage of S.L. 2017-209 giving the Commission authority to delegate the power to approve land use plans to any qualified employee of the Department.

Neal Andrew made a motion to approve the amendments to 15A NCAC 7B .0802 for public hearing. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

**Amendments to 7H .0312 Sediment Criteria (CRC 18-05)
Ken Richardson**

Ken Richardson stated the sediment criteria has four parts. The first is characterizing sediment and defining sediment on the native beach and categorizing grain sizes. The second is categorizing the borrow site. The third section defines compatibility between the native beach and the borrow site. The fourth section defines the excavation and placement of sediment. North Carolina has a comprehensive plan for sediment criteria and sand placement. These rules have only been amended one time since they went into effect. The CRC adopted these rules to ensure that sand use for beach nourishment closely matches the sand on the existing beach. The current sampling protocol associated with the sediment criteria rules is highly precise with regards to sample design, spacing, and numbers of cores. This precision can limit flexibility in sample design, and can also limit the ability of communities to pursue small projects. This sampling protocol can also limit an applicant's ability to use existing data. DCM staff propose eliminating this rigid protocol in favor of a simpler process where the project's consultant or engineer designs a sampling protocol that ensures sediment compatibility between the beach and borrow area. The responsibility for establishing the sampling protocol is placed on project applicants allowing staff to devote more time to the environmental review components of the project.

Larry Baldwin made a motion to approve the amendments to 15A NCAC 7H .0312 for public hearing. Neal Andrew seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Simmons, Norris).

COMMISSION UPDATES AND DISCUSSION ITEMS

CRC Science Panel Update (CRC 18-18)

Ken Richardson

In the 1990s, North Carolina experience five presidentially-declared disasters within a twelve-month period. Governor Hunt formed a Disaster Recovery Task Force in October 1996 to develop a comprehensive set of recommendations to facilitate the State's recovery. One of the specific issues addressed was the review of the CRC's hazard mitigation rules and Ocean Hazard Areas. The Commission was asked to evaluate the methodologies used to delineate specific hazard areas including an assessment of erosion rate calculations, setback requirements and the accuracy of ocean, flood and inlet hazard area delineations. To begin this assessment, the Division arranged a panel discussion at the January 1997 CRC meeting. The Commission discussed the need to use scientific knowledge on the problems the CRC faced as regulators. The

initial science advisory task force was assembled by DCM staff and was officially named the CRC's Science Panel on Coastal Hazards. Over the course of the next year, a set of short and long-term recommendations were developed by the Science Panel. Over the subsequent years, the Panel has been asked by the Commission and Division to develop recommendations or provide technical advice on many issues. Currently the Panel is working with staff to delineate updated Inlet Hazard Area boundaries using historical data, professional knowledge and updated mapping technologies.

There are currently nine active members of the Science Panel. At the December 2017 Science Panel meeting, the Panel expressed their desire to add new members to the Panel to fill existing vacancies. If the Commission would like to fill existing vacancies, the Division is prepared to send a call for nominations.

Neal Andrew made a motion to solicit nominations for the Science Panel, but make no appointments until the inlet study is completed. Greg Lewis seconded the motion. The motion passed unanimously (Rhodes, High, Medlin, Baldwin, Cahoon, Andrew, Lewis, Catlin, Norris).

CAMA Minor Permit Program

Debbie Wilson

Debbie Wilson stated the Minor Permit Program is a partnership between the State and local governments and is an important component of the original Coastal Area Management Act. Locally adopted Implementation and Enforcement Plans allow local governments to process CAMA Minor Permits and have an active role in the management of the coastal resources within their jurisdictions and will providing additional public service to their citizens. Minor permits are issued by a county or municipal representative known as the CAMA Local Permit Officer (LPO). LPOs are trained by the Division to administer minor permits for their locality. There are currently 41 municipalities, with 94 LPOs, participating in the Minor Permit Program. DCM issues Minor Permits for the other 15 municipalities and towns. Development within a designated AEC that involves less than one acre of land disturbance, does not require a permit or authorization from another state or federal agency, involves a structure or structures that are less than 60,000 square feet, and does not involve the alteration of any wetlands is eligible for a CAMA Minor Permit. DCM staff reviews all LPO activity. LPOs work closely with DCM especially when questions or difficult projects arise. DCM holds two training workshops per year. This training consists of an overview of rule changes and their application as well as field training including coastal wetland identification, normal high water delineations, and first line of stable natural vegetation determinations. In FY2016, there were 713 minor permits issued, 613 exemptions written, and 279 inspections completed. DCM uses NOAA funding to reimburse local governments for each minor permit that is issued, inspections, and travel to LPO training workshops.

Federal Consistency – General Overview (CRC 18-06)

Daniel Govoni

Daniel Govoni state the purpose of federal consistency is to require federal actions to be found consistent with the enforceable policies of the State's federally approved coastal program. This applies to federal actions that could have reasonably foreseeable coastal effects. Federal consistency provisions of CZMA provide states a strong voice in federal agency actions in the

coastal zone. Federal agency actions fall into four categories: federal agency activities; federal licenses or permits; outer continental shelf plans; and federal assistance. Activities conducted by a federal agency or by a contractor on behalf of a federal agency. Direct federal activities must be found consistent to the maximum extent practicable with the State's enforceable policies. Maximum extent practicable is defined in the federal register as activities that must be found fully consistent unless prohibited by federal law requirements applicable to that activity. Activities performed by a non-federal entity requiring federal permits or other forms of federal authorizations such as Corps and BOEM permits. These must be found to be fully consistent with the State's enforceable policies. However, a state must have previously requested and listed those federal permits they believe could have a coastal effect and this list must have been approved by NOAA before federal consistency can be applied. If a state wished to view an unlisted federal permit, then the state must notify the applicant and the federal agency and seek NOAA's approval to review the activity based on the state's belief the proposal will have a reasonably foreseeable coastal effect. The final action is federal assistance and this is simply federal funding. To obtain federal funding, the proposal must be found fully consistent with the state's enforceable policies. When applying federal consistency, a proposal must have a coastal effect. A coastal effect is defined as any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency action. These effects are not limited to just environmental effects, it also includes any effects on coastal uses such as recreational or commercial fishing or tourism. The effects can be either direct effects resulting from the activity at the same time and place or indirect effects which are cumulative and secondary effects. North Carolina's enforceable policies have been approved and incorporated into the federally approved coastal program. When the CRC amends or adopts a rule, DCM must submit that rule to NOAA for approval before it can be applied in a federal consistency determination. Once a federal agency has decided that their proposal is a federal action and has a coastal effect, DCM evaluates the proposal to determine if it complete. The proposal is then circulated to the appropriate state agencies for comment and public notice is given. After the proposal is reviewed for conformance with the enforceable policies, it is determined to be consistent, consistent with conditions, or objected to. In the event of an objection, there could be ongoing coordination or it could go through the mediation or appeal process through NOAA. DCM receives an average of 50 submissions per year and approximately 95% are found to be consistent. Most of these are routine projects, however the federal consistency process has played an important role in our ability to coordinate on important and sometimes controversial projects.

PUBLIC INPUT AND COMMENT

No public comments were received.

COMMISSION UPDATES AND DISCUSSION ITEMS

CRC Ocean Energy Policies (CRC 18-07)

Mike Lopazanski

Mike Lopazanski stated the state's territorial jurisdiction ends three miles out into the Atlantic. We have an interest in activities that occur beyond that boundary because of possible impacts to our coastal resources. Consistency is a tool available to us through the Federal CZMA. The State has the ability to comment on offshore energy projects. The North Carolina coastal program consists of administrative rules and policies as well local land use plans and the actions of other state agencies are required to be consistent with the coastal program under Governor Hunt's Executive Order 15. Several authorities allow the state to review and comment on proposed

federal activities. The CRC's coastal energy policies were originally adopted in 1979. They were broad and general policies that focused on land-based energy facilities. These rules were updated in 1996 and expanded the definition of major energy facilities and addressed information needed to perform the federal consistency determination. These rules were again updated in 2011 based on a follow up effort to the 2009 coastal policy steering committee recommendations. These recommendations including expanding the CRC's coastal energy policies to address new technologies, allow alternative energy facilities as water-dependent structures, to allow transmission lines to cross the beach, and coordinating with EMC wind energy efforts. In 2010, in response to the BP oil spill the General Assembly took several actions to address the possibility of a similar event off the North Carolina coast. Session Law 2010-179 included liability limits, made an amendment to CAMA to include information required for consistency review, directed the CRC to review current regulations, and required review of the State Oil Spill Contingency Plan and Oil Pollution and Hazardous Substance Control Act. Since the lifting of the east coast drilling moratorium in 2008, there is a lot of interest in studying offshore oil exploration. In 1988, Mobil proposed to drill an exploratory well off Cape Hatteras. Through the State's consistency review this project was found to be inconsistent due to a lack of information. Mobil appealed the consistency determination which was later upheld by the US Department of Commerce. Mobil sued the federal government. Congress passed the Outer Banks Protection Act in 1990 which prohibits offshore oil and gas development off the coast. Mobil won its breach of contract suit on appeal to the U.S. Supreme Court in 2000. As a result of winning the suit, Mobil relinquished their leases. Chevron proposed to drill in 1997. NC issued a favorable consistency determination in 1982. In 1997, Governor Hunt enacts the CRC's 1996 amendments to the coastal energy policies by Executive Order. In 1998, BOEM funds several studies to better understand the importance of "The Point" area. In 1998, President Clinton withdrew areas not already under annual Congressional moratorium. In 1999, gas dropped below one dollar per gallon and Chevron abandoned the proposal. Conoco purchased the remaining interest in the Manteo block leases. In 1999, Chevron relinquished all interest in the Manteo units. By 2000, all leases were termination or relinquished citing the area off North Carolina's coast as being too controversial. Moratoriums began in California in 1969. The federal moratorium was expanded to the North Atlantic by 1983. In 1990, President Bush signed an Executive Order banning all leases and the Outer Banks Protection Act was signed. In 1998, President Clinton extended the Presidential ban until 2012. In July 2007, gasoline prices reached upwards of \$4.00 per gallon and there was interest in increasing domestic production. President Bush lifted the moratorium. The Department of Interior administers the five-year lease plan. This plan consists of a schedule of lease sales with specific blocks offered of specific size and location. The leases are for a period of five to ten years. BOEM determines if bids are fair market value and each lease is subject to state consistency determination. In November 2016, North Carolina was included in 11 potential lease sales. In April 2017, Executive Order 13795 directed the Department of Interior to initiate a new five-year lease program that would supersede the current program and run from 2019-2024. In June 2017, BOEM notified North Carolina of the intent to develop the new five-year lease program. In August, Governor Cooper and DEQ Secretary Regan notified BOEM of North Carolina's opposition to inclusion into the five-year program. Comments are being accepted until March 2018 on the draft proposed program. The area of interest is "The Point". It is about 40 miles off the coast of North Carolina and the natural gas find could be one of the largest domestic discoveries since Prudoe Bay Alaska. This area has southward flowing Labrador current, a northward flowing Gulf Stream, Western boundary undercurrent, and has

unique bathymetric features. The fisheries offshore are managed by the National Marine Fisheries Service Fisheries Management Plan. These Plans contain essential fish habitat designations that are important to migratory species.

Ocean Energy Activities Update **Braxton Davis & Daniel Govoni**

Seismic surveys are used to evaluate potential for oil and gas exploration, but also used to identify sand resources offshore. The scope and scale used for sand resource identification is far less than that used for oil and gas exploration. In seismic testing for oil and gas resources a survey vessel tows an acoustic source, usually a high pressure air gun. The acoustic signal penetrates several thousand feet into the subsurface and then reflects to the surface receivers. DCM was notified there are currently nine applications to BOEM to conduct seismic surveys in the Atlantic Ocean off North Carolina. DCM submitted an unlisted activity review request to NOAA. NOAA granted DCM's request to review proposed seismic surveys and seismic testing for six companies. NOAA limited to Stat's review to the impacts on recreational and commercial fisheries. DCM received four federal consistency determinations. Public notice was placed in the newspapers throughout the North Carolina coastal region, circulated the proposals to other state agencies with regulatory and resource interests, held a public hearing, and received numerous comments concerning potential impacts on marine life and habitats including concerns raised by the Division of Marine Fisheries. DCM found the proposed surveys to be consistent, or did not find them to be inconsistent, with the relevant enforceable policies of North Carolina's approved coastal management program when performed with one required condition. The required condition stated that before any surveys could take place a pre-survey meeting must be held with the Division of Marine Fisheries and Division of Coastal Management staff so precise survey transects and timing could be reviewed and discussed in advance to avoid, minimize, and mitigate any possible impacts or conflicts with resources and users. We asked them to, where practical, relocate proposed survey transects to avoid South Atlantic Fishery Management Council designated Habitat Areas of Particular Concern, and important foraging, spawning, and refuge areas. We asked that surveys be timed in a manner that avoids potential use conflicts with offshore fishing tournaments, major recreational fishing areas, and seasonally-focused fishing efforts. The last condition was to follow the mitigation measures outlined in the Final Atlantic Geological and Geophysical (G&G) Activities Programmatic Environmental Impact Statement that BOEM established in 2014 for offshore oil and gas exploration. Since that time, applicants have been waiting on incidental harassment authorizations (IHA) from NOAA/National Marine Fisheries Service (NMFS) in accordance with the federal Marine Mammals Protection Act. This is required for incidental, non-intentional "taking" of a small number of marine mammals. These authorizations must be issued to the seismic companies before BOEM issues a final permit authorizing G&G survey activities. NMFS issued a federal register authorization notice as part of the IHA review process. Governor Cooper and NC DEQ submitted comments and requested denial of the applications due to significant threats to marine mammals off the coast of North Carolina. In December 2017, DCM requested supplemental consistency determinations from each of the four companies that received conditional concurrences in 2015. This is a formal legal request under the federal regulations based on new information that the proposed surveys will affect North Carolina's marine resources substantially different than originally described. Based on scientific studies published after the 2015 approvals describing impacts of seismic testing on fish behaviors, zooplankton, shellfish, and crustaceans, among other concerns. We have received the first formal response rejecting our request for a supplemental consistency determination. This

new leasing program (2019-2024), establishes a schedule of oil and gas lease sales proposed for the planning areas of the U.S. Outer Continental Shelf (OCS). The first step in the development process was a request for information, which was published in the Federal Register on July 3, 2017. The Governor and DEQ submitted comments in opposition to oil and gas leasing off North Carolina's coast due to potential impacts to our coastal economy and environment. Governor Cooper and coastal leaders met with federal Interior Secretary Zinke in late January as part of this process and requested additional meetings be scheduled along the coast. Currently, the 60-day public comment period is ongoing for the draft proposed program. The next opportunity for consistency review will happen during the lease sale stage of the process.

OLD/NEW BUSINESS

Rick Catlin stated as a Coastal Resources Commissioner and chairman of the NC Beach and Inlet Waterway Association (NCBIWA) and Kathleen Riely, CRAC Member, is the Executive Director of NCBIWA we can work together on issues like sand for our beaches, safe ocean pathways in our inlets, and maintaining travel inlet. These things lead to strong coastal tourism and economic success. Kathleen and I will be going to talk with our Representatives in Washington, DC about the importance of restoring federal funding and getting more dredging resources.

With no further business, the CRC adjourned.
Respectfully submitted,

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary