

## March 18 TGS steering committee meeting minutes

### CRC/CRAC members present:

Bob Emory  
Boots Elam  
Joan Weld  
Dara Royal  
Tracy Skrabal  
Spencer Rogers  
Bill Morrison  
Anne Deaton

The meeting began at 10 a.m. with a presentation by contractor Moffatt & Nichol on the final terminal groin study report summary findings.

Tracy Skrabal raised the issue of scope of work of economics section – excellent scope of work, great detail, and resulted in what would have been an excellent way to determine costs for erosion control scenarios for various policies. Why wasn't that done?

Johnny Martin replied M&N didn't feel they could come up with those different scenarios with any certainty, which was confirmed by the science panel members. There was strong consensus by the science panel not to pursue that direction. There was never the intent to study each inlet in NC during this study. Also, this was not asked for in the legislation.

Bob Emory stated it could be that there need to be more caveats about this issue as part of our recommendations.

Spencer Rogers asked: How does the habitat east of the groin at Fort Macon compare to habitat in an unmanaged inlet?

Dawn York answered that, looking at aerial photos, it seems inlet shoreline has grown, and the spit is growing into the channel. When compared to other inlets, we're not seeing as many species utilizing the shoreline at Fort Macon. Think the species tend to use Shackleford Banks and Rachel Carson shoal islands more. You see the same thing at Oregon inlet, John's Pass. Storm events tend to erode those inlet shorelines very quickly.

Anne Deaton stated that she sees some problems with the conclusions in environmental section. What's included in the draft recommendations is the same as the report? Bob Emory answered yes, that's correct.

Deaton stated she thinks it needs to be clear that this recommendation document begins with the study findings; would like to be able to add qualifiers to some of these findings for the recommendations. Some are a little misleading. The environmental section does not state there was no fish data or benthic data on any of the sites – should state this rather than saying the study was inconclusive. Concern is larval fish transport, benthic food base for fish, effect of loss of shoals and bars.

Bill Morrison

Tracy Skrabal stated the committee hasn't had an opportunity to really offer suggestions or comments to the summary of findings in the report, which are now being rolled into this document. For example, under the environmental section there is a bullet that says "anchoring the end of an island may curtail an inlet's natural migration patterns, curtailing the formation of sand flats." How does this impact the habitat? It's not stated in the study findings, so it will not be clear to anyone who picks up this document. There are a number of omissions that didn't make it into this report. Changes positive and negative some distance from the structures is not included in the summary findings.

Bob Emory suggested the committee could do a substitution for this draft of what we heard today in the presentation. The committee does have the opportunity in the summary to make additional statements if there is consensus about that today and next week. A list of things would be good. We can provide our own take on the report findings in our report. Maybe we don't need to list those findings since they are in the report.

General consensus to remove the summary of findings from the CRC recommendation document.

Jim Gregson suggested that the executive summary be pulled out and attached to the recommendations.

CRC Chair Bob Emory presented potential draft recommendations for discussion by the steering committee. These draft recommendations include the statement that the current ban on hardened structures for erosion control should be maintained.

### **The current ban on the use of hardened structures for erosion control should be maintained.**

**However, if it is the desire of the Legislature to direct the Commission to consider the construction of terminal groins, the Commission could be given the authority to allow the construction of a terminal groin by variance if the Commission finds that the terminal groin will be located and constructed to avoid the interruption of natural sand movement to downdrift beaches; all other non-structural erosion control responses, including relocation of threatened structures, are inadequate; and specific criteria for issuance of a variance are met:**

- 1. An application for a permit to construct a terminal groin under this subsection shall be accompanied by an environmental impact statement that meets the requirements of G.S. 113A-4.**
- 2. In addition to the notice required under G.S. 113A-119, the applicant for a permit to construct a terminal groin shall provide notice of the permit application by certified mail to each person who owns property located in the area potentially affected by the terminal groin. For purposes of this section, an area is potentially affected by a terminal groin if the environmental impact statement required under this section has identified direct or indirect impacts to the area as a result of construction of the terminal groin, maintenance and mitigation activities associated with the terminal groin, or potential post-construction effects of the terminal groin.**

The notice shall include a description of the project, including its proposed location and shall direct the property owner to the nearest location where a copy of the permit application and environmental impact statement can be inspected. If ownership of any property within the area potentially affected by the terminal groin changes before the Commission has made a final decision on the variance petition, the applicant shall provide notice pursuant to this section to the new property owner.

3. The variance may be granted only if the Commission finds that all of the variance criteria set out in G.S. 113A-120.1 have been met. For purposes of this subsection, G.S. 113A-120.1(a)(4) shall be interpreted to require the Commission to find that:
  - a. Construction of a terminal groin is the least environmentally damaging alternative for addressing shoreline changes that threaten existing structures, and;
  - b. The terminal groin will not directly or indirectly result in adverse impacts to other property, including impacts resulting from increased erosion.
4. A permit issued for a terminal groin pursuant to this section shall require:
  - a. A permittee other than a State agency, federal agency or unit of local government to provide financial assurance, in the form of a bond, insurance policy, escrow account or other financial instrument, that is adequate to cover the cost of:
    - i) Removal of the terminal groin and restoration of the beach if the Commission determines that the groin has an adverse impact on the environment or on other properties, and;
    - ii) Long-term maintenance of the terminal groin, including the cost of any required mitigation measures, and compliance with all conditions imposed on the variance.
  - b. The applicant shall submit evidence of a large-scale beach fill project as pursuant to 15A NCAC 7H .0305 including plans and related materials including reports, maps, tables and diagrams for the design and construction of the large- scale beach fill project, subsequent maintenance, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work.
  - c. Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project over its design life. This documentation shall be designed and prepared by the U.S. Army

**Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work.**

- d. Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.**
  - e. Third party monitoring of the impact of the terminal groin on coastal resources and on adjoining or downdrift properties.**
- 5. The Commission may impose reasonable and appropriate conditions on any variance issued under G.S. 113A-120.1 and shall include conditions requiring monitoring of the impact of the terminal groin on coastal resources and on adjoining or downdrift properties.**

Bill Morrison: this statement, the way it is, turns off a lot of people. Think it should be eliminated; begs the question why are we spending so much time on this? At our last meeting, we had six possibilities, including maintaining the ban but allow variances for terminal groins.

Bob Emory stated this gives the General Assembly an opportunity to change things if they don't want to maintain the ban. Nothing in the study indicated we needed a change in policy.

Tracy Skrabal stated if the CRC wants to defend its ban, it should say that, and give all the reasons why, then develop the other alternative as a secondary recommendation.

Dara Royal noted the policy has been in favor of non-structural responses. The thing that struck me is that this does not point out the existing exceptions in the law.

Jim Gregson noted the document does touch on that; it can be spelled out exactly what the exceptions are.

Spencer Rogers advised changing the current ban statement to "request authority to consider terminal groins." Thinks there are design procedures that can get most of the problems out of the way. At least if small terminal structures aren't an option for inlets, beach nourishment is not an option there either. What's the track record of the commission when it had the authority?

Emory noted that since 1994 the CRC granted a variance for the groin fields at Bald Head Island, and temporary sheet pile protection for Highway 12. Fort Fisher structured was granted in 1995.

Anne Deaton asked if anyone else asked for a structure. Bob Emory noted that there wasn't as much interest then as there is now.

Rogers noted the Commission's track record is that they don't hesitate to deny when they feel it is appropriate. The commission usually makes the right decision.

Skrabal noted that one of the problems with reversing what's in place now is that there is far more political pressure now than there ever was. If a terminal groin is allowed, how long will it be before the folks on the other side of the inlet are asking for their own structure because they are experiencing

erosion as a result of the groin? It's risky to stand behind terminal groins ONLY as a policy. By what justification do you only allow hard structures in one area and not another?

Anne Deaton noted that of the five study sites, they all have additional hard structures associated with them. That is a serious concern, and should be included in the summary.

Rogers agreed about the growing development pressures, but felt the authority to make the change should be in the hands of the CRC, when the alternative is to leave it in the hands of the legislature. Badly written laws are harder to change than badly written rules.

Emory stated that if the General Assembly elected to go with the variance procedure as described here, it would require that we have the ability to insist on a bond for the structure itself, and funds to maintain associated beach nourishment.

Dara: We would do well to have these criteria added to the exceptions that are already in place.

Spencer: worried about the variance process as a tool for doing this. The Fort Fisher revetment was enabled by rule, but taken out of the hands of the CRC. That was a policy decision, maintain beach vs. maintain historic structure. Under variance provisions, you could not look at the site or talk about it beforehand. Maybe look at the static line rule as a model for commission review of projects.

Discussion of the limitations of the variance process vs. putting authority in the CRC rules.

Deaton stated the need to stay focused on study results as inconclusive.

Emory said that's why the statement about maintaining the ban is there. Stated he looked for a reason in the study why we should recommend the change. Certainly the findings are mixed.

Skrabal said compelling evidence is needed to turn over the ban. Lack of evidence is not a reason to back off. Emory replied if the Legislature doesn't take the primary recommendation, he wanted something in there that gave the preferred alternative upfront.

Discussion of current exceptions to the hardened structures law: to protect a navigation channel, protect historic site, protect a bridge that provide the only access to a barrier island, for projects that received a variance prior to 1995. Not for a specific type of structure.

Emory stated he would still like to put in front of the CRC the option to recommend the ban be maintained, and that he wants to take two or three alternatives to the commission next week. If retaining the ban is one, what does this group want the other(s) to be?

Skrabal recommend retaining the ban and include all the reasons why, including that it might be done using the current exceptions.

The group looked at the possible recommendations from the Feb. CRC meeting:

- Retain the Ban With the Existing Exceptions (Status Quo)
- Retain the Ban and Get Rid of the Exceptions
- Retain the Ban With Existing and New Exceptions (Only Dredged Inlets?)

- Restore the CRC's Former Authority and Handle Terminal Groins with a Variance Procedure
  - With Standard Variance Criteria
  - With Specific Variance Criteria
- Retain the Ban but the Legislature Gives the CRC Authority to Develop Procedures for Permitting Terminal Groins
- Do More Study

Discussion of how CRC authority to permit terminal groins might be accomplished, e.g. following the static line exception standards, which must come to the CRC for approval; have CRC develop permitting standards.

Jim Gregson noted the CRC has a couple of ways to go: have the ability to develop permitting procedures. I think you could do that and come up with special criteria. I think it's difficult to come up with a permitting standard for something you know you're going to deny.

Skrabal: regarding least environmentally damaging alternative – where is the burden of proof with this.

Gregson: the way it's written here, it would be a finding of the environmental document. That's not to say DCM has to agree with that. If the draft recommendation is left like it is now, they will all be denied, and then go to the CRC for a variance review.

Discussion of the third-party review requirements.

Break for lunch

Bob Emory summarized the morning discussion: agreed that one of the choices that will be given to the full CRC next week is to retain the status quo. If we're going to change it, that should be supported by the study. There was a lot of discussion about alternatives:

- Variance procedure
- Giving CRC authority to adopt development standards for terminal groins via permitting process, with some CRC role in that decision

Rogers suggested recommendation to restore CRC's former authority and handle terminal groins with either a variance or rule with a petition review by the CRC. It could be very time consuming to write rules that do this, so this leaves the CRC flexibility to choose which route it would take.

Discussion of how to be clear that this option involves repealing or amending the law.

Discussion of keeping variance option and rule option in the same recommendation. Spencer states he is trying to limit the ability of staff to issue a permit without CRC review.

**Change 2nd recommendation to:** Amend the existing law to restore the CRC's former authority (before 2003) for only terminal groins through an expanded variance procedure.

**3<sup>rd</sup> recommendation:** Give the CRC authority to develop permitting procedures for terminal groins

Gregson asked: Do you want to just say they are not disallowed by law anymore, which gives the CRC authority to use variance process immediately, and also begin rulemaking. You could also suggest the GA put specific criteria on the exception in the law.

Emory stated this draft recommendation regarding variance criteria was written to be included in the law

Further discussion of the best way to handle permitting of terminal groins, if it is an option.

Royal stated she doesn't think the study justifies banning terminal groins under all circumstances; also doesn't support ending the general hard structure ban.

Emory asked if there were a strong feeling that we need to address permits in our options. Rogers reiterated he feels it is important to find a way to get CRC review as the last step. If you get permitting authority, you automatically get variance authority.

Discussion of other exceptions in the law. Emory stated this could be a good subject for a future commission meeting, rather than including it in this.

**Final recommendations to bring to full CRC:**

- 1) Retain the ban with existing exceptions (Status quo)**
- 2) Amend the law to restore the CRC's former authority (before 2003) for only terminal groins through an expanded variance procedure. (using Bob's suggestion on specific criteria)**
- 3) Amend the law to restore the CRC's former authority for only terminal groins to develop procedures for permitting terminal groins with a petition review by the CRC.**

Adjourn at 2:15 pm