

PUBLIC & INTERESTED PARTIES NOTICE

Notice of Proposed Changes to the North Carolina Coastal Management Program

Notice of intended action: Pursuant to the federal Coastal Zone Management Act regulations (15 CFR §§923.80 – 923.84), The North Carolina Coastal Management Program (NCCMP) hereby provides notice that it is submitting a program change request to the National Oceanic and Atmospheric Administration, Office for Coastal Management (OCM).

Purpose of the notice: The Coastal Zone Management Act (15 C.F.R. §923.84) requires state Coastal Zone Management Programs to formally incorporate changes made to the laws, rules and policies that are used for Federal Consistency. The changes that are the subject of this request have already become effective in administrative rule, and the purpose of this action is to incorporate these changes into the state's federally-approved Coastal Management Program. These changes are considered to be Routine Program Changes, and therefore do not significantly affect the (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization or (5) coordination, public involvement and national interest components of the (NCCMP). Upon concurrence by the National Oceanic and Atmospheric Administration, the policies discussed below will be incorporated into the Program.

Description of Change: Recent studies and assessments have shown that utility-scale wind energy might be feasible within the coastal area of North Carolina. This minor program change adds "wind energy facilities" to the other types of offshore energy activities that are regulated under the North Carolina Coastal Resources Commission's existing Coastal Energy Policies. The NCCMP considers the changes to meet the standards for routine program changes and is requesting concurrence with this finding from OCM. OCM will review these changes to ensure they do not constitute an amendment as described in 15 CFR 923.80.

Public Comment period: 07/12/2016 – 08/12/2016

How to Comment: Comments on these proposed changes should be submitted in writing directly to the National Oceanic and Atmospheric Administration by 08/12/2016 via email to Joelle.Gore@noaa.gov or at the following address:

Ms. Joelle Gore
Chief, Stewardship Division
Office for Coastal Management, NOAA
1305 East West Hwy., 10th Floor (N/ORM3)
Silver Spring, MD 20910

Complete copies of the program change package are available on the N.C. Division of Coastal Management website, <https://deq.nc.gov/about/divisions/coastal-management>, by emailing Daniel.Govoni@ncdenr.gov, by visiting the NC Division of Coastal Management at 400 Commerce Ave., Morehead City, or by calling 252-808-2808.

Dated: 07/12/2016

**Routine Program Change
to the
North Carolina Coastal Management Program**

**Request for Concurrence
July 2016**

NCAC 7H .0106
NCAC 7H .0208
NCAC 7H .0309
NCAC 7M .0400

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1. Introduction

The following constitutes a request by the State of North Carolina for the National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management (OCM) to concur in the incorporation of a Routine Program Change (RPC) regarding additional/modification of coastal energy policies to the North Carolina Coastal Management Program (CMP).

North Carolina's federally-approved CMP includes, but is not limited to, the Coastal Area Management Act (CAMA, NC G.S. 113A-100 through 134); the State's Dredge and Fill Law (NC G.S. 113-229); and Chapter 7 of Title 15A of North Carolina's Administrative Code (NCAC). The Division of Coastal Management, within the Department of Environmental Quality, administers the policy, planning and regulatory aspects of the coastal program in accordance with the legislative goals of CAMA and the Dredge and Fill Law. As set forth in NC G.S. 113A-102, North Carolina's CMP goals include the preservation and enhancement of the recreational and aesthetic values of the coastal area; ensuring the orderly and balanced use and preservation of our coastal resources; protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, fish and wildlife; economic development of the coastal area, including but not limited to construction, location and design of industries; and protection of present common-law and statutory public trust rights in the lands and waters of the coastal area. The routine program changes pertaining to coastal energy policies are within 15A NCAC 7H .0106; 7H 0208; 7H .0309 and 7M .0400.

The State has concluded that these changes do not substantially affect the five Program Approval Areas defined in 15 CFR Part 923, Subparts B through F, and in OCRM's July 1996 Program Change Guidance and 2013 Addendum. The changes do not modify Subpart C (Special Management Areas), Subpart D (Boundaries) Subpart E (Authorities and Organization) or Subpart F (Coordination, Public Involvement and National Interest). While the changes do affect Subpart B (Uses Subject to Management), the CMP does not believe that any of the changes are significant.

2. Analysis of Incorporation

A. Description of the Nature of the Program Change

Recent studies and assessments have shown that utility-scale wind energy might be feasible within the coastal area of North Carolina. In 2009, the N.C. Coastal Resources Commission (CRC) heard several presentations on the potential for wind energy development, including limitations and possible impacts of wind energy facilities. The N.C. Environmental Management Commission (EMC) concluded that the CRC be given the authority to permit the siting of these facilities. This recommendation was reiterated by the Division of Coastal Management's Ocean Policy Steering Committee, and was also included in a draft bill (S1068) before the State Legislature during the 2009 session.

In 2009 the CRC began moving ahead with incorporation of standards for the siting and operation of wind facilities into its administrative rules. NCAC 7H .0309 became effective on

May 1, 2010. 15A NCAC 7H .0106 General Definitions, 15A NCAC 7H .0208 Use Standards, and 15A NCAC 7M .0400 Coastal Energy Policies became effective on February 1, 2011.

In developing these changes, the CRC used the recommendations of the EMC and draft bill NC Senate Bill 1068 (SB 1068) intended for the NC General Assembly as a guide. While many of the rule changes are similar to those for other types of development activities in public trust areas, there are several that address specific concerns related to wind facilities. Prior to approving the proposed rules for public hearing, the DCM shared the draft language with other state agencies, federal agencies, the US Department of Defense, as well as a group of scientists familiar with the issues to ensure the amendments' adequacy in addressing relevant concerns. These comments were then brought to the CRC for consideration at their January 2010 meeting.

B. Identification of New or Changed Policies

The North Carolina Coastal Management Program seeks to incorporate the following coastal energy policies into its program.

Citation	Adoption date/Effective date	Addition/Modification/Description	Enforceable	Mechanism(s)
15A NCAC 07H .0106(5)	11/18/2010 2/1/2011	<p>Addition-Since the State focus has been on utility scale wind power, the Environmental Management Commission (EMC) developed a definition that was consistent with the requirement for facilities to receive a certificate from the NC Utilities Commission. In this case NC Senate Bill 3 (SB 3) required a certificate from the Utilities Commission at 2 MW. SB 1068 however, raised the threshold to 3 MW. The demonstration project proposed for Pamlico Sound calls for three 3 MW turbines. The capacity is an aggregate of all facilities within ½ mile of each other.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07H .0208(a)(1)	11/18/2010 2/1/2011	<p>Addition-The CRC restricts development that can be sited in, or adjacent to public trust waters, to that development which cannot achieve its primary use unless sited in that location. Docks and piers are an example of water-dependent development. The CRC has concluded that utility-scale wind energy facilities cannot achieve their primary function unless they are sited in or adjacent to public trust waters, and has therefore designated "wind energy facilities" as water dependent structures.</p>	Yes	N.C. CAMA Permitting Program

<p>15A NCAC 07H .0208(b)(13)(A)(i) through (vi)</p>	<p>11/18/2010 2/1/2011</p>	<p>Addition-7H 0208(13)(a)(i) thru (vi) outline what permit applicants are required to address. In their evaluation, the EMC received guidance from the Wind Working Group on technical aspects of wind energy projects, including noise, construction standards, shadow flicker and environmental & cultural impacts. Based on the recommendations and findings of the EMC, an evaluation of impacts on birds & bats, noise, and viewshed would be required. An evaluation of use conflicts would address interference with uses of public trust areas such as fishing and boating. Applicants are required to have a plan for decommissioning and removal of facilities, that must address removal cost and final site condition.</p>	<p>Yes</p>	<p>N.C. CAMA Permitting Program</p>
<p>15A NCAC 07H .0208(b)(13)(B)(i) through (iii)</p>	<p>11/18/2010 2/1/2011</p>	<p>Addition-Section (B) contains development standards, many of which are similar to those used in existing CRC rules to evaluate other types of development. The provisions in (B) mirror those in 7H .0208(b)(12) for Submerged Lands Mining - avoiding natural and artificial reefs, benthic communities and high relief hard bottom areas. Also included are provisions to avoid damage to cultural resources such as shipwrecks, and unique geological features. As with any permit review, the Division will utilize the expertise of other agencies to assist in making these determinations.</p>	<p>Yes</p>	<p>N.C. CAMA Permitting Program</p>

15A NCAC 07H .0208(b)(13)(B)(iv) through (vi)	11/18/2010 2/1/2011	<p>Addition-(iv) Addresses the timing of development activities to avoid periods of high biologic activity. (v) addresses user conflicts. (vi) is based upon EMC recommendations, as well as comments received from the Department of Defense. 14 CFR Part 77.13 requires that anyone undertaking a construction project exceeding 200' in elevation must notify the FAA and military services.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07H .0208(b)(13)(C) and (D)	11/18/2010 2/1/2011	<p>Addition-The amendments include standard provisions for permit conditions based on comments received from the review agencies. Specifically, (C) notifies applicants that monitoring may be required. The amendments also include (D) which is a standard public benefits exception.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07H .0309(g)	1/13/2010 5/1/2010	<p>Addition-This new exception will allow producers to install subterranean transmission cables from offshore generators to their onshore facilities. This new exception would not eliminate the need for a wind energy facility, including transmission lines, to undergo a thorough environmental review, including siting of the facility, bird and fish impacts, impacts to aesthetics, and potential conflicts with recreational and other public trust uses.</p>		

15A NCAC 07M .0401(a)	11/18/2010 2/1/2011	<p>Modification-As this statement is focused on balancing the public benefits of energy production with the preservation of valuable coastal resources, new language adds to this by balancing the need for energy, the protection of the natural resources and ecosystems, and the public's ability to use or have access to those resources.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07M .0401(b)	11/18/2010 2/1/2011	<p>Modification-Broadens the rule to be more inclusive of other types of energy production by removing the reference to oil and gas. Additionally, this modification refers to leasing actions by the federal government since the Federal Energy Regulatory Commission (FERC) is responsible for wave and ocean current energy facilities. Minor corrections of vague or ambiguous language in accordance with APA guidelines were also added.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07M .0402(a)(1) Definitions	11/18/2010 2/1/2011	<p>Modification-Language was added to the definitions section that clarifies the requirements for an impact assessment. The former language addressed, "effects on any land or water use or natural resource of the coastal area." The new language clarifies the focus by referring to effects on the use of public trust waters, adjacent lands, or coastal resources. The amended language clarifies the intent of the statement, which is to safeguard these areas from significant degradation. Public trust includes both estuarine and ocean waters. Minor corrections of vague or ambiguous language in accordance with APA guidelines were also added.</p>	Yes	N.C. CAMA Permitting Program

15A NCAC 07M.0402(a)(4) through (7)	11/18/2010 2/1/2011	<p>Modification-A discussion of beach compatible sand was added due to the increased interest in understanding the sand resources off the NC coast. This information is intended to be a component of the impact assessment, which will provide additional information to the permitting process and help in the determination of alternatives. (7) was added to correspond with the provision in SB1068 requiring an assessment of visual impacts, shadow flicker and noise caused by wind turbines.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07M .0402(a)(10)	11/18/2010 2/1/2011	<p>Modification-Decommissioning is a concern with any type of structure that is being placed in the water. While the CRC does not have the authority to require bonds for decommissioning, applicants must include a financial plan for decommissioning and removal. Minor corrections of vague or ambiguous language in accordance with APA guidelines were also added.</p>	Yes	N.C. CAMA Permitting Program

15A NCAC 07M .0402(a)(11)	11/18/2010 2/1/2011	<p>Modification-References to oil and gas have been removed to expand the section to all forms of energy exploration and development, and "petroleum products" has been inserted where it is necessary to separate this form of energy from others. Gathering of scientific data was added to account for meteorological data, current studies etc. that may be associated with other forms of energy exploration and development. Minor corrections of vague or ambiguous language in accordance with APA guidelines were also added.</p>	Yes	N.C. CAMA Permitting Program
15A NCAC 07M .0402(b)(1) through (8)	11/18/2010 2/1/2011	<p>Modification-References to oil and gas have been removed to expand the section to all forms of energy exploration and development, and "petroleum products" has been inserted where it is necessary to separate this form of energy from others. Wind energy facilities of three megawatts or greater have been added to the list of "major energy facilities". Minor corrections of vague or ambiguous language in accordance with APA guidelines were also added.</p>	Yes	N.C. CAMA Permitting Program

<p>15A NCAC 07M .0403(a) through (c) Policy Statements</p>	<p>11/18/2010 2/1/2011</p>	<p>Modification-The previous language addressed, "effects on any land or water use or natural resource of the coastal area." The new language clarifies the focus by referring to effects on the use of public trust waters, adjacent lands, or coastal resources. The amended language clarifies the intent of the statement, which is to safeguard these areas from significant degradation. Public trust includes both estuarine and ocean waters. An addition was made to part (c) to be consistent with the recommendations of the EMC and SB1068 to allow local governments to continue to exercise the full range of land use and police power ordinances with regard to wind energy facilities. Minor corrections of vague or ambiguous language in accordance with APA guidelines were also added.</p>	<p>Yes</p>	<p>N.C. CAMA Permitting Program</p>
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15A NCAC 07M .0403(d) through (g)	11/18/2010 2/1/2011	<p>Modification-The previous language addressed, "effects on any land or water use or natural resource of the coastal area." The new language clarifies the focus by referring to effects on the use of public trust waters, adjacent lands or coastal resources. The amended language clarifies the intent of the statement, which is to safeguard these areas from significant degradation. Public trust includes both estuarine and ocean waters. Rewording and updated language to reflect the use of coastal wetlands rather than saltwater wetlands were modified as well as the addition of areas to be avoided to better reflect the land uses in the coastal area. Corrections were also made to vague and ambiguous language in accordance with APA guidelines</p>	Yes	N.C. CAMA Permitting Program
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C. Program Approval Areas

Uses Subject to Management (15 C.F.R. Part 923, Subpart B)

There is a change to the Uses Subject to Management (Subpart B). This minor program change adds “wind energy facilities” to the other types of offshore energy activities that are regulated under the CRC’s existing Coastal Energy Policies. The CMP believes that coastal energy facilities and associated infrastructure could have a reasonably foreseeable coastal effect on coastal resources including but not limited to water use, scenic vistas, fish and wildlife; and economic development of the coastal area. In order to manage the impacts resulting from such facilities, this addition will allow the CRC to protect natural resources and ecosystems, and preserve the public’s ability to use and have access to those resources.

Special Management Areas (15 C.F.R. Part 923, Subpart C)

This program change does not make any changes to designated areas of particular concern.

Boundaries (15 C.F.R. Part 923, Subpart D)

This program change does not modify the boundaries of the North Carolina coastal zone.

Authorities and Organization (15 C.F.R. Part 923, Subpart E)

This program change does not change the CMP’s authorities nor organizational structure.

Coordination, Public Involvement and National Interest (15 C.F.R. Part 923, Subpart F)

This program change does not affect the coordination with governmental agencies having interests and responsibilities affecting the coastal zone nor the involvement of interest groups as well as the general public.

3. Comments from Other Agencies and Public During Development and Review

Prior to approving the proposed rules for public hearing, the Division of Coastal Management shared the draft language with other state agencies, federal agencies, the US Department of Defense, as well as a group of scientists familiar with the issues to ensure the amendments adequacy in addressing relevant concerns. These comments were then brought to the CRC for consideration at their January 2010 meeting.

Comments were received from the Department of Defense, NC Wildlife Resources Commission, NOAA Coastal Fisheries and Habitat Research Center, and the Carteret County Shore Protection Office. The comments were relatively minor covering the differences between use standards and policy statements, construction and operational

conditions, as well as noticing requirements. In most cases, the comments were addressed by existing rules or through the normal permitting process.

4. Conclusion

Pursuant to the Coastal Zone Management Act §306(e) and 15 CFR 923.80, the state of North Carolina has reviewed the changes submitted for incorporation into the state CMP (N.C. General Statute 113A-115.1 Coastal Area Management Act) and has concluded that the submitted changes are not Program Amendments. The state believes that these changes will not substantially change the enforceable authorities of the CMP, uses subject to management under the state CMP, or national interests in the state's coastal zone. Therefore, according to the standards set forth by 15 CFR §923.80(d) and 15 CFR §923.84, and by OCRM's Program Change Guidance of July 1996, the state of North Carolina submits these program changes as Routine Program Changes and requests OCRM's concurrence with this action.

5. A. Text of Rule Change with underline/strikeout

15A NCAC 07H .0106 GENERAL DEFINITIONS

(5) "Wind Energy Facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy.

*History Note: Authority G.S. 113A-102; 113A-107;
Eff. June 1, 1995;
Amended Eff. February 1, 2011; August 1, 1998; October 1, 1996.*

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;

Rule.

(b) Specific Use Standards

(13) "Wind Energy Facilities"

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

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

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

- (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
- (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the ~~[WRC;] WRC~~ such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
- (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural ~~[Resources;] Resources~~ and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;

- (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine [waters;] waters; and
- (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under [14 CFR Part 77.13;] 14 CFR Part 77.13.
- (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to insure compliance with the [provisions guidelines] standards for development set out in this [Subchapter.] Rule. Permit conditions may include monitoring to ensure compliance with all applicable development [standards.] standards; and
- (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

*History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;
Eff. September 9, 1977;
Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;
RRC Objection due to ambiguity Eff. March 21, 1996;
Amended Eff. February 1, 2011; August 1, 2010; June 1, 2010; August 1, 1998; May 1, 1996.*

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in 07H.0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;
Eff. February 2, 1981;
Amended Eff. May 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116;
August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991;
April 1, 1987.*

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the state and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized and equally important public interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits attached to of necessary energy development against with the need to [to;] 1) protect valuable coastal resources; resources and 2) preserve access to and utilization of public trust resources, the planning of future land uses, uses affecting both land and public trust

resources, the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon vital coastal resources or uses, public trust areas and public access rights.

(b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that ~~federal oil and gas~~ leasing actions of the ~~US Department of the Interior~~ federal government be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions ~~and policies~~ of this Rule, Subchapter as well as any other applicable federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other relevant energy facilities ~~must shall~~ contain sufficient information to allow ~~adequate~~ analysis of the consistency of all proposed activities with these ~~Rules and policies~~: Rules.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000.

15A NCAC 07M .0402 DEFINITIONS

(a) "Impact Assessment" is an analysis which ~~fully~~ discusses the potential environmental, economic and social consequences, including cumulative and secondary impacts, of a proposed ~~project~~: major energy facility. At a minimum, the assessment shall include the following and for each of the following shall discuss and assess any effects ~~on any land or water use or natural resource of the coastal area~~, the project will have on the use of public trust waters, adjacent lands and on the coastal resources, including the effects ~~within the coastal area~~ caused by activities outside the coastal area:

- (1) a ~~full~~ discussion of the preferred sites for those elements of the project affecting ~~any land or water use or natural resource~~ the use of public trust waters, adjacent lands and the coastal resources; ~~of the coastal area~~:
 - (A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full discussion [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
 - (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present reasonable evidence to support the proposed location over a feasible alternate site;

- (C) In those cases where an applicant chooses a site previously identified by the state as suitable for such development and the site is outside an AEC or not on a barrier island, alternative site considerations shall not be required as part of this assessment procedure;
- (2) a ~~full~~ discussion of the economic impacts, both positive and negative, of the proposed project. This discussion shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This discussion shall include analysis of likely adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts of significance;
 - (3) a ~~full~~ discussion of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;
 - (4) a full discussion of potential adverse impacts on existing industry and potential limitations on the availability of ~~natural of, and accessibility to,~~ coastal resources, particularly including beach compatible sand and water, for future industrial use or development;
 - (5) a ~~full~~ discussion of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;
 - (6) a full discussion of potential risks ~~of danger~~ to human life or property;
 - (7) ~~a discussion of the impacts on the human environment including noise, vibration and visual impacts;~~
 - (7)(8) a ~~full~~ discussion of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
 - (8)(9) other specific data necessary for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;
 - (10) ~~a plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed.~~
 - (9)(11) a specific demonstration that the proposed project is consistent with relevant local land use plans and with guidelines governing land uses in AECs.

Any impact assessment for a ~~proposal for oil or gas exploration activities-~~ proposed major energy facility shall include a full discussion of the items described in Subparagraphs (a)(1) through (9) (11) of this Rule for the associated energy exploration or development activity, activities including all reasonably foreseeable assessments of resource potential, including the gathering of scientific data, exploration wells wells, and any delineation activities that are reasonably likely to follow a discovery of oil or gas- development, production, maintenance and decommissioning.

(b) "Major energy facilities" are those energy facilities which because of their size, magnitude or scope of impacts, have the potential to affect any land or water use or natural coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include, but are not necessarily limited to, the following:

- (1) Any facility capable of refining ~~oil~~; petroleum products;
- (2) Any terminals (and associated facilities) capable of handling, processing, or storing ~~liquid propane gas, liquid natural gas,~~ petroleum products or synthetic natural gas;
- (3) Any ~~oil or gas~~ petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- (4) Electric Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other equipment necessary for the operation of a wind generating facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, capable of generating three megawatts or larger;
- ~~(5)~~(6) Thermal energy generation;
- ~~(6)~~(7) Major pipelines 12 inches or more in diameter that carry ~~crude petroleum, natural gas, liquid natural gas, liquid propane gas,~~ petroleum products or synthetic gas;
- ~~(7)~~(8) Structures, including drillships and floating platforms and structures relocated from other states or countries, located in offshore waters for the purposes of ~~exploration for, or~~ energy exploration, development or production of, oil or natural gas; production; and
- ~~(8)~~(9) Onshore support or staging facilities related to ~~exploration for, or~~ offshore energy exploration, development or production of, oil or natural gas; production.

(c) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. October 1, 1988;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997.
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000.*

15A NCAC 07M .0403 POLICY STATEMENTS

(a) The placement and operations of major energy facilities in or affecting ~~any land or water~~ the use of public trust waters and adjacent lands or natural coastal resource resources of the North Carolina coastal area shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and ~~State~~ state guidelines in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and ~~with rules for land uses in AECs.~~ use standards for development within AECs, as set forth in 15A NCAC 07H.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or natural coastal resource of the North Carolina coastal area shall include a full disclosure of all costs and benefits

associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the ~~applicant as defined in 15A NCAC 07M .0402.~~ applicant. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance [concern] concerning land use and any applicable permitting process.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources and resources, public trust waters will be protected, waters, and the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, ~~areal~~ aerial extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting ~~any land or water use~~ the use of public trust waters and adjacent lands or natural coastal resource ~~of the coastal area~~ shall be sited and operated so as to comply with the following criteria:

(1) Activities that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on ~~land or water uses~~ the use of public trust waters and adjacent lands in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no significant adverse impacts on ~~land or water uses or natural~~ the use of public trust waters and adjacent lands or coastal ~~resources of the coastal area.~~ resources;

(2) Necessary For petroleum facilities, necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall ~~completely~~ assess the risks of ~~oil~~ petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information must demonstrate that the potential for ~~oil~~ petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in

trajectory scenarios. For facilities requiring an Oil Spill Response Plan, this information shall be included in such a ~~plan. plan;~~

(3) Dredging, spoil disposal and construction of related structures that are ~~reasonably likely to affect any land or water use or natural~~ have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resource of the coastal area resources shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine ~~environment. environment;~~

(4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational ~~value, value~~ such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or interference is ~~reasonably likely to affect any land or water use or natural resource~~ have significant adverse impacts on the use of public trust waters and adjacent lands of the coastal area. or coastal resources;

(5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is ~~reasonably likely to affect any land or water use or natural resource~~ have significant adverse impacts on the use of public trust waters, adjacent lands [and natural resources] of the coastal area. or coastal resources;

(6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that significant adverse impacts on ~~any land or water use or natural resource~~ the use of public trust waters, adjacent lands and [natural] coastal resources of the coastal area shall be ~~avoided. avoided;~~

(7) ~~Adverse~~ Significant adverse impacts on ~~species identified as~~ federally listed threatened or endangered ~~species on Federal or State lists~~ shall be ~~avoided. avoided;~~

(8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic ~~sites. sites;~~

(9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing ~~inlets. inlets;~~

(10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:

- (A) areas of high biological significance, including offshore reefs, rock ~~outerops and~~ outcrops, hard bottom areas, sea turtle nesting beaches, ~~freshwater and saltwater~~ coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish ~~habitat-habitat~~ habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation ~~beds~~, as defined by the Marine Fisheries Commission, ~~shellfish beds, anadromous fish spawning and nursery areas, and~~ colonial bird nesting colonies; areas, and migratory bird routes;

- (B) ~~Traets~~ tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
- (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
- (D) anchorage areas and ~~congested~~ port areas;
- (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- (F) dump sites;
- (G) primary dunes and frontal dunes;
- (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges and other areas used in a like ~~manner.~~ manner;
- (I) military air space, training or target area and transit [~~lines;~~] lanes;
- (J) cultural or historic sites of more than local significance; and
- (K) segments of Wild and Scenic River System.

(11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be ~~avoided.~~ avoided; and

(12) If facilities located in the coastal area are abandoned, habitat of ~~equal~~ value equal to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the abandonment of the structure is ~~reasonably likely to affect any land or water use or natural resource of the coastal area.~~ have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

~~(g) As used in this Section, an event that is "reasonable likely" to occur if credible evidence supports the conclusion that the event will likely occur.~~

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
 Eff. March 1, 1979;
 Amended Eff. April 1, 1992;
 Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;
 Amended Eff. February 1, 2011; August 1, 2000.*

Attachment B: Copy of Public Notice of Submittal to OCRM

PUBLIC & INTERESTED PARTIES NOTICE

Notice of Proposed Changes to the North Carolina Coastal Management Program

Notice of intended action: Pursuant to the federal Coastal Zone Management Act regulations (15 CFR §§923.80 - 923.84), The North Carolina Coastal Management Program (NCCMP) hereby provides notice that it is submitting a program change request to the National Oceanic and Atmospheric Administration, Office for Coastal Management (OCM).

Purpose of the notice: The Coastal Zone Management Act (15 C.F.R. §923.84) requires state Coastal Zone Management Programs to formally incorporate changes made to the laws, rules and policies that are used for Federal Consistency. The changes that are the subject of this request have already become effective in administrative rule, and the purpose of this action is to incorporate these changes into the state's federally-approved Coastal Management Program. These changes are considered to be Routine Program Changes, and therefore do not significantly affect the (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization or (5) coordination, public involvement and national interest components of the (NCCMP). Upon concurrence by the National Oceanic and Atmospheric Administration, the policies discussed below will be incorporated into the Program.

Description of Change: Recent studies and assessments have shown that utility-scale wind energy might be feasible within the coastal area of North Carolina. This minor program change adds "wind energy facilities" to the other types of offshore energy activities that are regulated under the North Carolina Coastal Resources Commission's existing Coastal Energy Policies. The NCCMP considers the changes to meet the standards for routine program changes and is requesting concurrence with this finding from OCM. OCM will review these changes to ensure they do not constitute an amendment as described in 15 CFR 923.80.

Public Comment period: 07/12/2016 - 08/12/2016

How to Comment: Comments on these proposed changes should be submitted in writing directly to the National Oceanic and Atmospheric Administration by 08/12/2016 via email to Joelle.Gore@noaa.gov or at the following address:

Ms. Joelle Gore
Chief, Stewardship Division
Office for Coastal Management, NOAA
1305 East West Hwy., 10th Floor (N/ORM3)
Silver Spring, MD 20910

Complete copies of the program change package are available on the N.C. Division of Coastal Management website, <https://deq.nc.gov/about/divisions/coastal-management>, by emailing Daniel.Govoni@ncdenr.gov, by visiting the NC Division of Coastal Management at 400 Commerce Ave., Morehead City, or by calling 252-808-2808.

Dated: 07/12/2016