



CRC-26-51

February 4, 2026

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller, Director
THROUGH: Daniel Govoni, Policy Section Chief
SUBJECT: Petition for Rulemaking by Mr. Nelson Paul- Director's Recommended Response

The Division of Coastal Management (Division) received a Petition for Rulemaking from Nelson G. Paul (Petitioner) on November 12, 2025. As required by G.S. § 150B-20(a), within three days on November 14, 2025, DCM Staff sent "the proposed text of the requested rule change and the statement of the effect of the requested rule change to the Office of Administrative Hearings." Also as required by the same provision, on November 17, 2025, the Office of Administrative Hearings "distribute[d] the information via its mailing list and publish[ed] the information on its Web site." G.S. § 150B-20(b) requires that if the agency making the decision is a board of commission, "it must grant or deny a rule-making petition within 120 days after the date the rule-making decision is submitted." The 120th day after November 12, 2025 is March 12, 2026. In a December 4, 2025 letter, CRC Counsel Special Assistant Attorney General Sarah Zambon notified the Petitioner that his petition was complete, and that it would be heard at your February 25-26, 2026, meeting. The Coastal Resources Commission's (CRC) rules governing review of a Petition for Rulemaking at 15A NCAC 7J .0605(b) provide that the Director shall prepare a Recommended Response to the petition for the CRC's consideration, and this document is that Response.

Pursuant to G.S. § 150B-20(c), the Commission can deny or grant a rule-making petition.

(c) Action. – If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.



Petitioner's proposed rulemaking would largely seek to insert the changes to the CAMA and the Dredge and Fill law made through the language of Session Law 2025-48, into the CRC's rules. In his petition, Petitioner claims that "wording will bring Coastal Resources Commission rules into alignment with recent modifications to N.C.G.S. 113A-103 (8a); N.C.G.S. 113A-113 (b)(2); N.C.G.S. 113A-113 (b)(5); and N.C.G.S. 113A-229(n)(3)" The Petitioner goes on to state that "Incorporating this wording into Coastal Resources Commission rules clarifies the statutory limits of the Coastal Area Management Act. These statements represent an agreement between the regulated public and the NC Division of Coastal Management. Leaving the wording unchanged in the Coastal Resources Commission rules is not a true picture of the regulatory framework prescribed by the Legislature."

The language of Session Law 2025-48 made three statutory changes, including:

- 1) CAMA 113A-103 (adds a new definition of "man-made ditches"),
- 2) CAMA 113A-113 (for the Estuarine Waters and Public Trust Areas that were suggested AECs the Commission might (and did) adopt through rulemaking and also states that man-made ditches may not be designated as an AEC),
- 3) Dredge and Fill Law 113-229 (stating that a "marshland" as defined may not include a man-made ditch).

Petitioner's Petition proposed making additions to four rules, including:

- 1) 15A NCAC 07H .0106 General Definitions (adding in the new language of 113A-103 verbatim plus an additional sentence stating man-made ditches are not AEC's),
- 2) 15A NCAC 07H .0205(a) Coastal Wetlands (in the Coastal Wetlands AEC, adding language stating Coastal Wetlands in a man-made ditch are not in the Coastal Wetland AEC);
- 3) 15A NCAC 07H .0206(a) Estuarine Waters (states that man-made ditches are not Estuarine Waters)and
- 4) 15A NCAC 07H .0207(a) Public Trust Waters (states in the definition of a Public Trust Area that it excludes man-made ditches).

The Division has concerns that Petitioner's proposal would violate the North Carolina Administrative Procedure Act (APA) § 150B-19 "Restrictions on what can be adopted as a rule" which states in relevant part, an agency may not adopt a rule that...(4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the 'reasonably necessary' standard of review set in G.S. 150B-21.9(a)(3).

The Division is concerned that if the CRC moves forward with the proposed language, once the proposed rule gets to the Rules Review Commission, it may well object to Petitioner's proposed rule language (if put forward by the CRC) as violating the APA.



STAFF'S PROPOSED AMENDMENTS TO ADDRESS SESSION LAW 2025-48

Staff have drafted alternative rule language to address Session Law 2025-48 for your consideration. In order to address session law 2025-48, staff propose the following amendments:

15A NCAC 07H .0106(6)

The term "man-made ditches" are defined in G.S. 113A-103(8a).

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Definition. "Coastal Wetlands" are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (*littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*);
- (2) Black Needlerush (*Juncus roemerianus*);
- (3) Glasswort (*Salicornia* spp.);
- (4) Salt Grass (*Distichlis spicata*);
- (5) Sea Lavender (*Limonium* spp.);
- (6) Bulrush (*Scirpus* spp.);
- (7) Saw Grass (*Cladium jamaicense*);
- (8) Cat-tail (*Typha* spp.);
- (9) Salt Meadow Grass (*Spartina patens*); or
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113- 230(a). Man-made ditches as defined in 15 NCAC 7H .0106(6) are excluded from the Coastal Wetlands AEC.

15A NCAC 07H .0207 PUBLIC TRUST AREAS

(a) Definition. "Public trust areas" are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water, except man-made ditches, as defined in 15 NCAC 7H .0106(6), in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means.



DIRECTOR'S RECOMMENDED RESPONSE

The Director's recommended response to Petitioner's Petition is for the CRC to grant this petition for rulemaking, but to state that it does not endorse Petitioner's proposed text. Once the CRC initiates rule-making proceedings, the CRC can consider whether to put forward Petitioner's proposed text or the Division's proposed text which may better avoid any potential conflicts with the APA. Staff looks forward to discussing this at the upcoming meeting.

Attachments:

G.S. 150B-20 Petitioning an agency to adopt a rule
15A NCAC 7J .0605 Petitions for Rulemaking
Petitioner's Petition for Rulemaking Materials, including S.L. 2025-48 (Section 3.)



North Carolina Department of Environmental Quality | Division of Coastal Management
Morehead City Office | 400 Commerce Avenue | Morehead City, North Carolina 28557
252.515.5400

§ 150B-20. Petitioning an agency to adopt a rule.

(a) **Petition.** – A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition. An agency receiving a rule-making petition shall, within three business days of receipt of the petition, send the proposed text of the requested rule change and the statement of the effect of the requested rule change to the Office of Administrative Hearings. The Office of Administrative Hearings shall, within three business days of receipt of the proposed text of the requested rule change and the statement of the effect of the requested rule change, distribute the information via its mailing list and publish the information on its Web site.

(b) **Time.** – An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) **Action.** – If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) **Review.** – Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) **Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(b). (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; c. 477, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 7.10(b); 1997-34, s. 2; 2003-229, s. 1; 2017-211, s. 1(a).)**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

SESSION LAW 2025-48
SENATE BILL 472

AN ACT TO MAKE VARIOUS CHANGES TO THE PROCESS FOR 401 WATER QUALITY CERTIFICATIONS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY, TO REFORM PERMITTING RELATED TO UPLAND BASIN MARINAS, AND TO CLARIFY THAT CERTAIN MAN-MADE DITCHES ARE NOT COVERED UNDER THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-214.1A reads as rewritten:

"§ 143-214.1A. Water quality certification requirements for certain projects.

(a) The following requirements shall govern applications for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), for (i) maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund and Fund, (ii) projects involving the distribution or transmission of energy or fuel, including natural gas, diesel, petroleum, or ~~electricity~~ electricity, and (iii) projects involving construction of an upland basin marina, as defined in G.S. 113A-129.11:

...

(c) For projects that are eligible for a Nationwide Permit or Regional General Permit issued by the United States Army Corps of Engineers, which are not subject to subsection (a) of this section, and are required or elect to be covered under an Individual Water Quality Certification, the Department shall perform a review of an application pursuant to all of the following requirements:

- (1) On receipt of such application, the Department shall notify the applicant of any required fee within five business days. If the Department does not send the applicant a fee request within five business days of receipt of an application, the fee is waived. The Department's review period shall begin on the date the application fee is paid or on the sixth business day from receipt when the application fee has been waived pursuant to this subdivision. For application fees that are paid via interagency batch payment, the review period shall start on receipt of the application by the Division of Water Resources. The Department shall additionally post any public notice required under the federal Clean Water Act within five business days of receipt of an application.
- (2) Within 30 business days of the beginning of the review period, the Department shall (i) determine whether or not the application is complete and notify the applicant accordingly and, (ii) if the Department determines an application is incomplete, specify all such deficiencies in a notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Department for the Department's review. Review of amended applications or supplemental information responses provided by the applicant shall occur within 20 business days of receipt. An application may be deemed incomplete only if it does not provide



sufficient information necessary for the Department to determine if the proposed discharges into navigable waters will comply with State water quality requirements. If the Department fails to issue a notice that the application is incomplete within the requisite initial 30-day period, or the supplemental 20-day review period, the application shall be deemed complete. As used in this section, "State water quality requirements" means water quality standards approved by the United States Environmental Protection Agency pursuant to 33 U.S.C. § 1313(c)(3).

- (3) If the Department determines that a public hearing is necessary pursuant to applicable requirements, the Department shall notify the applicant within the review period outlined in subdivision (2) of this subsection. If the hearing officer determines that additional information is required from the applicant at the conclusion of the public hearing comment period, the Department shall notify the applicant within 15 business days of the conclusion of the comment period and the supplemental information shall be subject to the review time lines laid out in subdivision (2) of this subsection.
- (4) The Department shall either approve or deny an application within (i) 10 business days of the date the application is deemed complete if no public hearing is held or (ii) 15 business days of the close of the record if a public hearing is held and no additional information is required. Failure of the Department to approve or deny the application within the requisite time period, as applicable, shall result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, which shall not exceed one year from the State's receipt of the application for certification.
- (5) The Department shall issue a certification, with or without conditions or limitations, upon determining that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department may include as conditions or limitations in a certification any effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department shall not impose any other conditions or limitations in a certification.
- (6) The Department shall deny a certification application only if it determines that no reasonable conditions or limitations would provide assurance that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The denial shall include a statement explaining why the Department determined the proposed discharges into navigable waters subject to the federal Clean Water Act will not comply with the State water quality requirements.
- (7) The Department may grant, deny, or waive certification but shall not require an applicant to withdraw an application.

(d) On receipt of any application for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), the Department shall notify the applicant of any required fee within five business days. If the Department does not send the applicant a fee request within five business days of receipt of an application, the fee is waived."

SECTION 1.(b) This section becomes effective October 1, 2025, and applies to applications for section 401 certification pending or submitted on or after that date.

SECTION 2. Article 7 of Chapter 113A of the General Statutes is amended by adding a new Part to read:

"Part 5A. Upland Basin Marinas.

"§ 113A-129.10. Legislative findings; broad construction.

(a) The General Assembly finds that development of properly sited and planned upland basin marinas to accommodate vessels promotes the public welfare for a number of reasons, including all of the following:

- (1) Increasing riparian property owner access to the State's public trust waters.
- (2) Expanding the total area of the State's public trust waters.
- (3) Reducing and confining potential storm debris.
- (4) Reducing the need for additional onshore impervious surfaces associated with parking.
- (5) Promoting the use of innovative technologies.
- (6) Promoting the collection of site-specific data designed to assure compliance with applicable water quality standards.
- (7) Maintaining or improving overall water quality when sited, designed, constructed, and operated in conformance with the provisions of this Part.

(b) Accordingly, it is the intent of the General Assembly that this Part be broadly construed to further the general purposes stated in this Part.

"§ 113A-129.11. Definitions.

As used in this Part, the following definitions apply:

- (1) AEC or Area of Environmental Concern. – An area designated by the Coastal Resources Commission pursuant to G.S. 113A-113.
- (2) Boat slip. – Any structure adjoining, attached to, or part of a pier which has the capacity to store one boat.
- (3) Upland basin marina. – A marina constructed by excavating or dredging lands of elevations above the current mean or ordinary high-water mark and designed to accommodate more than 10 vessels or boat slips. Upland basin marinas shall be considered a water-dependent use for purposes of general use standards adopted by the Coastal Resources Commission.

"§ 113A-129.12. Upland basin marina permitting and development.

(a) Unless the Director of the Division of Water Resources or the Director of the Division of Coastal Management makes a finding, based on site-specific technical information, that the applicant cannot comply with one or more of the criteria listed in subsection (b) of this section, the Division of Water Resources and the Division of Coastal Management shall approve an application for the development of an upland basin marina project, within 60 days after the applicant submits a completed application or supplemental information requested by the Department to demonstrate compliance with all of the criteria set forth in subsection (b) of this section. The Department may make one written request for any supplemental information necessary to make its finding within 30 days after the applicant submits a complete application, and the permit may be conditioned upon measures that are necessary to ensure that the applicant complies with all of the criteria set forth in subsection (b) of this section. When the Department requests supplemental information, the 60-day review period restarts upon receipt of the supplemental information requested by the Department. If the Department fails to act on an application for the development of an upland basin marina project within the 60-day review period, the application shall be deemed approved.

(b) The criteria with which an upland basin marina shall comply to qualify for permitting pursuant to subsection (a) of this section are all of the following:

- (1) The upland basin marina is designed to accommodate 10 or more vessels, including individual homeowner boat slips, boat lifts, or dry stack storage.
- (2) The waters contained in the upland basin marina have a dissolved oxygen content equal to or greater than the dissolved oxygen content of the water located 50 feet plus or minus 5 feet from the entrance to the upland basin

marina before development. As part of the application, an applicant shall provide to the Division of Water Resources and the Division of Coastal Management site-specific sampling data documenting pre-project dissolved oxygen levels of the water located 50 feet plus or minus 5 feet from each proposed entrance to the proposed upland basin marina. Waters located within the upland basin marina shall be classified the same as the waters in the immediate vicinity of any entrance to the upland basin marina.

- (3) The project has a bond or set-aside funds for the long-term operation and maintenance of any technology required to meet or exceed then-applicable water quality standards. The applicant shall provide an estimate of annual operation and maintenance costs, and the bond or set-aside funds shall be equal to five years of the estimated annual operation and maintenance costs.
- (4) Construction of the upland basin marina impacts or removes a total area of coastal wetlands that is no more than five percent (5%) of the total area of the proposed upland basin marina waters.
- (5) Construction of the upland basin marina impacts or removes a total linear footage of coastal wetlands fringe that is no more than ten percent (10%) of the total linear footage of existing coastal wetlands along the shoreline of the property or properties of the permit applicant.
- (6) The proposed upland basin marina project complies with specific use standards adopted by the Coastal Resources Commission for navigation channels, canals, and boat basins. An upland basin marina project shall not be considered a "finger canal" or "finger canal system" if the project does not contain right angle corners.
- (7) The upland basin marina has a 30-foot vegetated buffer or buffers along the post-project shoreline, excluding any newly created inside shorelines, if required by the Department.
- (8) The proposed upland basin marina project complies with specific use standards adopted by the Coastal Resources Commission for marinas, except that a stormwater management system may be located within the 30-foot buffer area described in subdivision (7) of this subsection.
- (9) The project includes mitigation or has mitigation credits for wetland impacts caused by excavation or construction of entrances, exits, and upland vessel accommodation areas, where such entrances, exits, and upland vessel accommodation areas exceed 125 linear feet of shoreline in total.
- (10) The upland basin marina is sited and designed to avoid significant adverse impacts to the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation, water quality, and spawning and primary nursery areas. Compliance with subdivisions (1) through (10) of this subsection shall create a presumption that the project has avoided significant adverse impacts to the productivity and biologic integrity of coastal wetlands, non-coastal wetlands, shellfish beds, submerged aquatic vegetation, water quality, spawning areas, and primary nursery areas and to have complied with State water quality antidegradation requirements. Compliance constitutes appropriate avoidance of significant adverse environmental impacts, including those identified in this Part.

(c) The submission of a Major Development Coastal Area Management Act (CAMA) permit application for an upland basin marina project shall constitute a complete application for purposes of water quality certification review by the Division of Water Resources. Unless the Director of the Division of Water Resources or the Director of the Division of Coastal Management objects in writing or requests additional information necessary to evaluate

compliance with water quality standards as provided in subsection (a) of this section, no further information shall be required by the Department for purposes of evaluating whether the upland basin marina project will comply with water quality standards or CAMA use standards referenced in this Part. Compliance with the Major Development CAMA permitting process shall also constitute compliance with all relevant provisions of Article 1 of this Chapter.

(d) The Department shall allow an applicant for an upland basin marina project to use innovative technology to maintain dissolved oxygen levels or improve dissolved oxygen above pre-project ambient dissolved oxygen levels in the immediate vicinity of the entrance to the upland basin marina. If the applicant proposes the use of innovative technology, the Department shall require the permit holder to provide financial assurance, in the form of a bond or set-aside funds, for long-term operation and maintenance of the innovative technology, in accordance with subdivision (b)(3) of this section. If the applicant provides a certification from a North Carolina licensed professional engineer that the proposed innovative technology is capable of attaining required dissolved oxygen levels within the proposed upland basin marina, the Department shall not require any additional information.

(e) In the absence of site-specific technical concerns provided to the applicant by the Director of the Division of Water Resources or the Director of the Division of Coastal Management based on information provided during the permit review process, an upland basin marina project that satisfies the criteria provided in subsection (b) of this section shall be deemed to satisfy all of the following:

(1) CAMA management objectives and relevant use standards of the estuarine and ocean system AECs.

(2) CAMA management objectives and use standards of the coastal wetlands AEC.

(3) The policy goals stated in G.S. 113-102(b).

(f) Nothing in this section shall be construed to abrogate the Department's authority to ensure long-term compliance with applicable water quality standards in light of the goals and requirements set forth in this Part. If data collected as part of the requirements of this Part, or otherwise, indicate noncompliance with applicable water quality standards in the waters within the upland basin marina or adjacent waters within the vicinity of each entrance to the upland basin marina, the Department may require the owner of the upland basin marina development at the time of the noncompliance to bring the waters within the upland basin marina and adjacent waters into compliance with applicable water quality standards, in light of the overall goals and policies set forth in this Part to promote the construction and use of upland basin marinas.

(g) Nothing in this section shall obviate the need for an applicant to obtain all relevant federal permits required for the upland basin marina project."

SECTION 3.(a) G.S. 113A-103 is amended by adding a new subdivision to read:

"(8a) "Man-made ditches" mean constructed, altered, or excavated features used to convey water, including, but not limited to, artificial ponds, culverts, canals, swales, storm channels, minor-drainage features, and roadside ditches. For purposes of this subdivision, the term "altered" does not include the alteration of a natural shoreline, natural stream, or natural wetland, and the term "excavated" does not include submerged lands that have been dredged for the purpose of navigation."

SECTION 3.(b) G.S. 113A-113 reads as rewritten:

"§ 113A-113. Areas of environmental concern; in general.

...

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

...

- (2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and ~~tributaries~~ tributaries, excluding man-made ditches under G.S. 113A-103(8a), thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;

...

- (5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, excluding man-made ditches under G.S. 113A-103(8a), to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

...

(b1) The Commission may not designate man-made ditches, as defined under G.S. 113A-103(8a), as areas of environmental concern.

...."

SECTION 3.(c) G.S. 113-229(n)(3) reads as rewritten:

- "(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). A marshland shall not include any area contained within a man-made ditch, as defined under G.S. 113A-103(8a)."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2025.

s/ Rachel Hunt
President of the Senate

s/ Destin Hall
Speaker of the House of Representatives

s/ Josh Stein
Governor

Approved 12:38 p.m. this 2nd day of July, 2025

CONFIRMATION OF HAND DELIVERY

To: NC Division of Coastal Management
C/O Tancred Miller, Director
400 Commerce Avenue
Morehead City, NC 28557

RECEIVED

NOV 12 2025

Subject: Petition for Rulemaking Pursuant to NCGS 150B-20

DCM-MHD CITY

Title: Request to Amend Coastal Resources Commission Rules:
15 NCAC 7H .0106 General Definitions;
15 NCAC 7H .0205 (a) Coastal Wetlands;
15 NCAC 7H .0206 (a) Estuarine Waters; and,
15 NCAC 7H .0207 (a) Public Trust Areas

This is to confirm the undersigned is authorized to receive hand-delivery of Petitions for Rulemaking Pursuant to NCGS 150B-20. By signing below, their signature confirms receipt of the attached on behalf of the Coastal Resources Commission.

SIGNED: _____



DATE: _____

11-12-25

PRINTED NAME: _____

Jonathan Howell

TITLE: _____

Deputy Director

To: NC Division of Coastal Management
C/O Tancred Miller, Director
400 Commerce Avenue
Morehead City, NC 28557

Subject: Petition for Rulemaking Pursuant to NCGS 150B-20

Title: Request to Amend Coastal Resources Commission Rules:
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15 NCAC 7H .0206 (a) Estuarine Waters; and,
15 NCAC 7H .0207 (a) Public Trust Areas

RECEIVED

NOV 12 2025

Mandatory Requirements pursuant to 15A NCAC 07J .0605:
(1) either a draft of the proposed rule or a summary of contents:

DCM-MHD CITY

Response: Petition Draft Wording (underline=addition):

15 NCAC 7H .0106 General Definitions

(6) "Man-made ditches" mean constructed, altered, or excavated features used to convey water, including, but not limited to, artificial ponds, culverts, canals, swales, storm channels, minor-drainage features, and roadside ditches. For purposes of this subdivision, the term "altered" does not include the alteration of a natural shoreline, natural stream, or natural wetland, and the term "excavated" does not include submerged lands that have been dredged for the purpose of navigation. Man-made ditches are not Areas of Environmental Concern.

15 NCAC 7H .0205 (a) Coastal Wetlands

(a) Definition. "Coastal Wetlands" are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (*littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*);
- (2) Black Needlerush (*Juncus roemerianus*);
- (3) Glasswort (*Salicornia* spp.);
- (4) Salt Grass (*Distichlis spicata*);
- (5) Sea Lavender (*Limonium* spp.);
- (6) Bulrush (*Scirpus* spp.);
- (7) Saw Grass (*Cladium jamaicense*);
- (8) Cat-tail (*Typha* spp.);
- (9) Salt Meadow Grass (*Spartina patens*); or
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113 230(a). Coastal Wetlands do not include any area contained within a man-made ditch, as defined in 15 NCAC 7H.0106 (6).

15 NCAC 7H .0206 (a) Estuarine Waters

(a) Definition. "Estuarine Waters" are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic

Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries, excluding any area contained within a man-made ditch, as defined in 15 NCAC 7H .0106 (6), thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

15 NCAC 7H .0207 (a) Public Trust Areas

(a) Definition. "Public trust areas" are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water, except man-made ditches, as defined in 15 NCAC 7H .0106 (6), containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(2) a statement of reasons for adoption of the proposed rule(s);

Response: Adoption of the draft petition wording will bring Coastal Resources Commission rules into alignment with recent legislative modifications to N.C.G.S. 113A-103 (8a); N.C.G.S. 113A-113(b) (2); N.C.G.S. 113A-113 (b) (5); and, N.C.G.S. 113-229 (n) (3).

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(3) a statement of effect on existing rules or orders;

Response: Incorporating this wording into Coastal Resources Commission rules clarifies the statutory limits of the Coastal Area Management Act. These statements represent an agreement between the regulated public and the NC Division of Coastal Management. Leaving the wording unchanged in the Coastal Resources Commission rules is not a true picture of the regulatory framework prescribed by the Legislature.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(4) any data in support of the proposed rule(s);

Response: Legislative changes to the Coastal Area Management Act signed into law on July 2, 2025 are attached.

Mandatory Requirements pursuant to 15A NCAC 07J .0605:

(5) a statement of the effect of the proposed rule on existing practices;

Response: Presently, this action should not have any impact on existing field activities of the NC Division of Coastal Management. It is reported that NC Division of Coastal Management has complied with this legislative guidance since becoming law.

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**Mandatory Requirements pursuant to 15A NCAC 07J .0605:
(6) the name and address of the petitioner.**

Response:

Nelson G. Paul, Petitioner
307 Misty Grove Circle
Morrisville, NC 27560

List of Attachments: Session Law 2025-48, Senate Bill 472

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SESSION LAW 2025-48
SENATE BILL 472

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AN ACT TO MAKE VARIOUS CHANGES TO THE PROCESS FOR 401 WATER QUALITY CERTIFICATIONS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY, TO REFORM PERMITTING RELATED TO UPLAND BASIN MARINAS, AND TO CLARIFY THAT CERTAIN MAN-MADE DITCHES ARE NOT COVERED UNDER THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-214.1A reads as rewritten:

"§ 143-214.1A. Water quality certification requirements for certain projects.

(a) The following requirements shall govern applications for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), for (i) maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund and Fund, (ii) projects involving the distribution or transmission of energy or fuel, including natural gas, diesel, petroleum, or ~~electricity~~ electricity, and (iii) projects involving construction of an upland basin marina, as defined in G.S. 113A-129.11:

...
(c) For projects that are eligible for a Nationwide Permit or Regional General Permit issued by the United States Army Corps of Engineers, which are not subject to subsection (a) of this section, and are required or elect to be covered under an Individual Water Quality Certification, the Department shall perform a review of an application pursuant to all of the following requirements:

- (1) On receipt of such application, the Department shall notify the applicant of any required fee within five business days. If the Department does not send the applicant a fee request within five business days of receipt of an application, the fee is waived. The Department's review period shall begin on the date the application fee is paid or on the sixth business day from receipt when the application fee has been waived pursuant to this subdivision. For application fees that are paid via interagency batch payment, the review period shall start on receipt of the application by the Division of Water Resources. The Department shall additionally post any public notice required under the federal Clean Water Act within five business days of receipt of an application.
- (2) Within 30 business days of the beginning of the review period, the Department shall (i) determine whether or not the application is complete and notify the applicant accordingly and, (ii) if the Department determines an application is incomplete, specify all such deficiencies in a notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Department for the Department's review. Review of amended applications or supplemental information responses provided by the applicant shall occur within 20 business days of receipt. An application may be deemed incomplete only if it does not provide



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sufficient information necessary for the Department to determine if the proposed discharges into navigable waters will comply with State water quality requirements. If the Department fails to issue a notice that the application is incomplete within the requisite initial 30-day period, or the supplemental 20-day review period, the application shall be deemed complete. As used in this section, "State water quality requirements" means water quality standards approved by the United States Environmental Protection Agency pursuant to 33 U.S.C. § 1313(c)(3).

(3) If the Department determines that a public hearing is necessary pursuant to applicable requirements, the Department shall notify the applicant within the review period outlined in subdivision (2) of this subsection. If the hearing officer determines that additional information is required from the applicant at the conclusion of the public hearing comment period, the Department shall notify the applicant within 15 business days of the conclusion of the comment period and the supplemental information shall be subject to the review time lines laid out in subdivision (2) of this subsection.

(4) The Department shall either approve or deny an application within (i) 10 business days of the date the application is deemed complete if no public hearing is held or (ii) 15 business days of the close of the record if a public hearing is held and no additional information is required. Failure of the Department to approve or deny the application within the requisite time period, as applicable, shall result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, which shall not exceed one year from the State's receipt of the application for certification.

(5) The Department shall issue a certification, with or without conditions or limitations, upon determining that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department may include as conditions or limitations in a certification any effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department shall not impose any other conditions or limitations in a certification.

(6) The Department shall deny a certification application only if it determines that no reasonable conditions or limitations would provide assurance that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The denial shall include a statement explaining why the Department determined the proposed discharges into navigable waters subject to the federal Clean Water Act will not comply with the State water quality requirements.

(7) The Department may grant, deny, or waive certification but shall not require an applicant to withdraw an application.

(d) On receipt of any application for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), the Department shall notify the applicant of any required fee within five business days. If the Department does not send the applicant a fee request within five business days of receipt of an application, the fee is waived."

SECTION 1.(b) This section becomes effective October 1, 2025, and applies to applications for section 401 certification pending or submitted on or after that date.

SECTION 2. Article 7 of Chapter 113A of the General Statutes is amended by adding a new Part to read:

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"Part 5A. Upland Basin Marinas.

"§ 113A-129.10. Legislative findings; broad construction.

(a) The General Assembly finds that development of properly sited and planned upland basin marinas to accommodate vessels promotes the public welfare for a number of reasons, including all of the following:

- (1) Increasing riparian property owner access to the State's public trust waters.
- (2) Expanding the total area of the State's public trust waters.
- (3) Reducing and confining potential storm debris.
- (4) Reducing the need for additional onshore impervious surfaces associated with parking.
- (5) Promoting the use of innovative technologies.
- (6) Promoting the collection of site-specific data designed to assure compliance with applicable water quality standards.
- (7) Maintaining or improving overall water quality when sited, designed, constructed, and operated in conformance with the provisions of this Part.

(b) Accordingly, it is the intent of the General Assembly that this Part be broadly construed to further the general purposes stated in this Part.

"§ 113A-129.11. Definitions.

As used in this Part, the following definitions apply:

- (1) AEC or Area of Environmental Concern. – An area designated by the Coastal Resources Commission pursuant to G.S. 113A-113.
- (2) Boat slip. – Any structure adjoining, attached to, or part of a pier which has the capacity to store one boat.
- (3) Upland basin marina. – A marina constructed by excavating or dredging lands of elevations above the current mean or ordinary high-water mark and designed to accommodate more than 10 vessels or boat slips. Upland basin marinas shall be considered a water-dependent use for purposes of general use standards adopted by the Coastal Resources Commission.

"§ 113A-129.12. Upland basin marina permitting and development.

(a) Unless the Director of the Division of Water Resources or the Director of the Division of Coastal Management makes a finding, based on site-specific technical information, that the applicant cannot comply with one or more of the criteria listed in subsection (b) of this section, the Division of Water Resources and the Division of Coastal Management shall approve an application for the development of an upland basin marina project, within 60 days after the applicant submits a completed application or supplemental information requested by the Department to demonstrate compliance with all of the criteria set forth in subsection (b) of this section. The Department may make one written request for any supplemental information necessary to make its finding within 30 days after the applicant submits a complete application, and the permit may be conditioned upon measures that are necessary to ensure that the applicant complies with all of the criteria set forth in subsection (b) of this section. When the Department requests supplemental information, the 60-day review period restarts upon receipt of the supplemental information requested by the Department. If the Department fails to act on an application for the development of an upland basin marina project within the 60-day review period, the application shall be deemed approved.

(b) The criteria with which an upland basin marina shall comply to qualify for permitting pursuant to subsection (a) of this section are all of the following:

- (1) The upland basin marina is designed to accommodate 10 or more vessels, including individual homeowner boat slips, boat lifts, or dry stack storage.
- (2) The waters contained in the upland basin marina have a dissolved oxygen content equal to or greater than the dissolved oxygen content of the water located 50 feet plus or minus 5 feet from the entrance to the upland basin

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marina before development. As part of the application, an applicant shall provide to the Division of Water Resources and the Division of Coastal Management site-specific sampling data documenting pre-project dissolved oxygen levels of the water located 50 feet plus or minus 5 feet from each proposed entrance to the proposed upland basin marina. Waters located within the upland basin marina shall be classified the same as the waters in the immediate vicinity of any entrance to the upland basin marina.

- (3) The project has a bond or set-aside funds for the long-term operation and maintenance of any technology required to meet or exceed then-applicable water quality standards. The applicant shall provide an estimate of annual operation and maintenance costs, and the bond or set-aside funds shall be equal to five years of the estimated annual operation and maintenance costs.
- (4) Construction of the upland basin marina impacts or removes a total area of coastal wetlands that is no more than five percent (5%) of the total area of the proposed upland basin marina waters.
- (5) Construction of the upland basin marina impacts or removes a total linear footage of coastal wetlands fringe that is no more than ten percent (10%) of the total linear footage of existing coastal wetlands along the shoreline of the property or properties of the permit applicant.
- (6) The proposed upland basin marina project complies with specific use standards adopted by the Coastal Resources Commission for navigation channels, canals, and boat basins. An upland basin marina project shall not be considered a "finger canal" or "finger canal system" if the project does not contain right angle corners.
- (7) The upland basin marina has a 30-foot vegetated buffer or buffers along the post-project shoreline, excluding any newly created inside shorelines, if required by the Department.
- (8) The proposed upland basin marina project complies with specific use standards adopted by the Coastal Resources Commission for marinas, except that a stormwater management system may be located within the 30-foot buffer area described in subdivision (7) of this subsection.
- (9) The project includes mitigation or has mitigation credits for wetland impacts caused by excavation or construction of entrances, exits, and upland vessel accommodation areas, where such entrances, exits, and upland vessel accommodation areas exceed 125 linear feet of shoreline in total.
- (10) The upland basin marina is sited and designed to avoid significant adverse impacts to the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation, water quality, and spawning and primary nursery areas. Compliance with subdivisions (1) through (10) of this subsection shall create a presumption that the project has avoided significant adverse impacts to the productivity and biologic integrity of coastal wetlands, non-coastal wetlands, shellfish beds, submerged aquatic vegetation, water quality, spawning areas, and primary nursery areas and to have complied with State water quality antidegradation requirements. Compliance constitutes appropriate avoidance of significant adverse environmental impacts, including those identified in this Part.

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(c) The submission of a Major Development Coastal Area Management Act (CAMA) permit application for an upland basin marina project shall constitute a complete application for purposes of water quality certification review by the Division of Water Resources. Unless the Director of the Division of Water Resources or the Director of the Division of Coastal Management objects in writing or requests additional information necessary to evaluate

compliance with water quality standards as provided in subsection (a) of this section, no further information shall be required by the Department for purposes of evaluating whether the upland basin marina project will comply with water quality standards or CAMA use standards referenced in this Part. Compliance with the Major Development CAMA permitting process shall also constitute compliance with all relevant provisions of Article 1 of this Chapter.

(d) The Department shall allow an applicant for an upland basin marina project to use innovative technology to maintain dissolved oxygen levels or improve dissolved oxygen above pre-project ambient dissolved oxygen levels in the immediate vicinity of the entrance to the upland basin marina. If the applicant proposes the use of innovative technology, the Department shall require the permit holder to provide financial assurance, in the form of a bond or set-aside funds, for long-term operation and maintenance of the innovative technology, in accordance with subdivision (b)(3) of this section. If the applicant provides a certification from a North Carolina licensed professional engineer that the proposed innovative technology is capable of attaining required dissolved oxygen levels within the proposed upland basin marina, the Department shall not require any additional information.

(e) In the absence of site-specific technical concerns provided to the applicant by the Director of the Division of Water Resources or the Director of the Division of Coastal Management based on information provided during the permit review process, an upland basin marina project that satisfies the criteria provided in subsection (b) of this section shall be deemed to satisfy all of the following:

- (1) CAMA management objectives and relevant use standards of the estuarine and ocean system AECs.
- (2) CAMA management objectives and use standards of the coastal wetlands AEC.
- (3) The policy goals stated in G.S. 113-102(b).

(f) Nothing in this section shall be construed to abrogate the Department's authority to ensure long-term compliance with applicable water quality standards in light of the goals and requirements set forth in this Part. If data collected as part of the requirements of this Part, or otherwise, indicate noncompliance with applicable water quality standards in the waters within the upland basin marina or adjacent waters within the vicinity of each entrance to the upland basin marina, the Department may require the owner of the upland basin marina development at the time of the noncompliance to bring the waters within the upland basin marina and adjacent waters into compliance with applicable water quality standards, in light of the overall goals and policies set forth in this Part to promote the construction and use of upland basin marinas.

(g) Nothing in this section shall obviate the need for an applicant to obtain all relevant federal permits required for the upland basin marina project."

SECTION 3.(a) G.S. 113A-103 is amended by adding a new subdivision to read:

"(8a) "Man-made ditches" mean constructed, altered, or excavated features used to convey water, including, but not limited to, artificial ponds, culverts, canals, swales, storm channels, minor-drainage features, and roadside ditches. For purposes of this subdivision, the term "altered" does not include the alteration of a natural shoreline, natural stream, or natural wetland, and the term "excavated" does not include submerged lands that have been dredged for the purpose of navigation."

SECTION 3.(b) G.S. 113A-113 reads as rewritten:

"§ 113A-113. Areas of environmental concern; in general.

...
(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

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- (2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and ~~tributaries~~ tributaries, excluding man-made ditches under G.S. 113A-103(8a), thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;

- ...
- (5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, excluding man-made ditches under G.S. 113A-103(8a), to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

...

(b1) The Commission may not designate man-made ditches, as defined under G.S. 113A-103(8a), as areas of environmental concern.

...."

SECTION 3.(c) G.S. 113-229(n)(3) reads as rewritten:

- "(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). A marshland shall not include any area contained within a man-made ditch, as defined under G.S. 113A-103(8a)."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2025.

s/ Rachel Hunt
President of the Senate

s/ Destin Hall
Speaker of the House of Representatives

s/ Josh Stein
Governor

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Approved 12:38 p.m. this 2nd day of July, 2025