

# *NC Division of Coastal Management*

**NC Dept. of Environmental Quality**

**Division of Coastal Management**

*Petition for Rulemaking by Mr. Nelson Paul- Director's Recommended Response*

*Daniel Govoni*

*February 26, 2026*



# *Summary of the Petition for Rulemaking*



- Received a Petition for Rulemaking from Nelson G. Paul (Petitioner) on November 12, 2025
- In a December 4, 2025 letter, CRC Counsel Special Assistant notified the Petitioner that his petition was complete, and that it would be heard at your February 25-26, 2026, meeting
- Your 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

# *Petition for Rulemaking*



- Petitioner seeks to insert the changes of the 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.

# *Session Law 2025-48*



## **Made Three Statutory Changes:**

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 Proposed Rule Making*



- 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)
- 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)
- 15A NCAC 07H .0206(a) Estuarine Waters (states that man-made ditches are not Estuarine Waters)
- 15A NCAC 07H .0207(a) Public Trust Waters (states in the definition of a Public Trust Area that it excludes man-made ditches).

# *Staff's Opinion*



## **Proposal would violate the 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).*

# *Staff's Proposed Amendments to Address Session Law 2025-48*



## **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. Man-made ditches as defined in 15 NCAC 7H .0106(6) are excluded from the Coastal Wetlands AEC.

# *Staff's Proposed Amendments to Address Session Law 2025-48*



## **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*



CRC to grant this petition for rulemaking, but to state that it does not endorse Petitioner's proposed text. If 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.