



CRC-26-70

August 6, 2026

MEMORANDUM

TO: Coastal Resources Commission
FROM: Jonathan Howell
SUBJECT: Permitting and Consistency Processes

The NC Dredge and Fill Law (G.S. 113-229), adopted in 1969, requires any entity that wishes to dredge or fill in or about Estuarine Waters or State-owned lakes to obtain a permit from the Department prior to conducting the work. At its inception, the Act was administered by the Division of Marine Fisheries with permits obtained through that agency.

In 1974, the NC Legislature adopted bi-partisan legislation titled the Coastal Area Management Act (CAMA) and with it, created the NC Coastal Resources Commission (CRC), Coastal Resources Advisory Council (CRAC), and the Division of Coastal Management (DCM). At this time, administration of the Dredge and Fill Law was transitioned to the Division of Coastal Management with certain provision outlined in G.S. 113A-125.

Notwithstanding the requirement for obtaining a permit through the Dredge and Fill Law and the CAMA, additional authorization is required to fulfill the requirements of Section 10 of the Rivers and Harbors Act and Sections 401 and 404 of the Clean Water Act. These authorizations are obtained through the US Army Corps of Engineers (USACE) and through the Environmental Protection Agency (EPA), with the Division of Water Resources (DWR) delegated authority through the EPA for compliance with Section 401 of the Clean Water Act.

In accordance with CAMA § 113A-120(b)(4) DCM is required to determine if a project meets other federal and state laws, regulations, and rules for the protection of the environment. To make this determination, general permits are coordinated with DWR and USACE prior to adoption to ensure Section 10 of the Rivers and Harbors Act and Sections 401 and 404 of the Clean Water Act are met. Additionally, through the CAMA Major Permit umbrella process, CAMA Major Permits are circulated to DWR and USACE for comments to serve that same function.

Compliance with Section 10 of the Rivers and Harbors Act and Sections 404 and 401 of the Clean Water Act have been streamlined through coordination between the state and federal



agencies responsible for ensuring the requirements of the legislation are fulfilled. This includes the adoption of programmatic regional general permit 198000291 by USACE, and the ability of the Division to issue buffer authorizations on behalf of DWR through a Memorandum of Understanding and the adoption of a Memorandum of Agreement to reduce fees and paperwork.

The federal Coastal Zone Management Act (CZMA) requires Federal Consistency review from the State's Coastal Management Program, as approved by the National Oceanic Atmospheric Administration (NOAA). A federal consistency determination is required if the federal activity is within the state's twenty coastal counties or may have an effect on the state's coastal resources or uses, even if the activity would occur outside of the 20 coastal counties. Federal Consistency applies if the activity:

- is a direct federal activity;
- is not a direct federal activity but requires a federal license or permit;
- receives federal money; or
- is a plan for exploration, development or production from any area leased under the Outer Continental Shelf Lands Act.

Federal consistency requires the federal agency to review the State's NOAA-approved coastal management program, which consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina's Administrative Code, and the land use plan of the County and/or local municipality in which the proposed project is located. The federal agency must determine whether they believe the proposed activity is consistent to the maximum extent practicable with the State's enforceable policies and submit a Federal Consistency Determination (FCD) to the State. The State is given a minimum of 60 days to review and respond, including seeking public and agency input.

DCM receives and reviews approximately 50 to 60 FCDs each year. Examples include federal navigation and dredging projects, beach nourishment and shoreline stabilization projects, military activities, state and local projects receiving federal financial assistance, and projects requiring federal permitting or licensing. State objections are extremely rare; over the last decade the State has found only the three proposals inconsistent with the State's enforceable policies: the Wilmington Harbor Expansion (2026), the North American Right Whale Speed Rule (2024), and WesternGeco's proposal to conduct seismic testing for oil and gas exploration on the Outer Continental Shelf (2019).

Staff look forward to providing an in-depth review of permitting processes as it relates to 401 Water Quality Certifications, the umbrella process, federal permits and Federal Consistency at your upcoming August CRC meeting.

