15A NCAC 07H .0208 is proposed for amendment as follows:

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses that 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;

(2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:

(A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC in Rule .0203 of this Section and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i), and spawning and nursery areas;

(B) Development shall comply with State and federal water and air quality rules, statutes, and regulations;

(C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Natural and Cultural Resources;

(D) Development shall not increase siltation;

(E) Development shall not create stagnant water bodies;

(F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and

(G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits consistent with the findings and goals of the Coastal Area Management Act identified in G.S. 113A-102, that the public benefits outweigh the adverse effects of the project, that there is no alternate site available for the project, and that all means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:

(A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(B) restore the affected environment; or

(C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place and populations are uniformly in their early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) at 15A NCAC 03R .0103 and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 10C .0502;

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC) as defined in 15A NCAC 02B .0225; and

(6) Beds of "submerged aquatic vegetation" are defined as those habitats in public trust and estuarine waters, that occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas, vegetated with one or more species of submergent vegetation as listed in 15A NCAC 03I .0101(4)(i). Any rules relating to beds of submerged aquatic vegetation shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(7) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).

(8) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short- and long-term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

(A) both adverse impacts as defined in Subparagraph (a)(7) of this Rule and impacts that promote or enhance the goals of the Coastal Area Management Act set out at G.S. 113A-102(b);

(B) the degree to which the proposed action affects public health or safety;

(C) unique characteristics of the geographic area;

(D) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;

(E) the degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;

(F) the degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into smaller component parts; and

(G) the degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined in 15A NCAC 07H .0208(a)(6), or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may not be allowed through regularly and irregularly flooded coastal wetlands if the loss of wetlands will have significant adverse impacts on fishery resources, water quality, or adjacent wetlands. Navigation channels and canals may be allowed if there is no alternative that would avoid the wetland ~~losses;~~ losses, or if the navigation channel or canal is associated with an upland basin marina authorized pursuant to G.S. 113A-129.12(b);

(B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(C) Dredged material from maintenance of channels and canals through coastal wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no wetland impacts. Under no circumstances shall dredged material be placed on regularly or irregularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

(D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;

(E) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;

(F) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;

(G) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and

(H) Maintenance excavation in canals, channels, and boat basins within primary nursery areas and beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i), by the Marine Fisheries Commission shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation shall be approved if the applicant meets all of the following criteria:

(i) There has been navigational use of the area;

(ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) and Part (b)(1)(C) of this Rule without impacting adjacent nursery areas and beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission;

(iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel; and

(v) Consistent with the provisions of G.S. 113-229.

(2) Hydraulic Dredging

(A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;

(B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with 15A NCAC 07H .0208(b)(8) and 15A NCAC 07H .0312 except as provided in Part (G) of this Subparagraph;

(C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;

(F) A water control structure shall be installed at the intake end of the effluent pipe;

(G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and

(H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;

(B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will ensure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include existing disposal sites;

(C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and

(D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation beds as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates, and retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth required to allow passage of those migratory organisms; and

(C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.

(5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin, or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities, and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking, and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

(A) Marinas shall be sited in non-wetland areas or in deep water areas not requiring dredging, and shall not disturb shellfish resources, beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission, or wetland habitats, except for dredging necessary for access to high-ground sites. The following alternatives for siting marinas shall be allowed.

(i) an upland basin site ~~requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;~~ that complies with the criteria established within G.S. 113A-129.12;

~~(ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;~~

~~(iii)~~(ii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and

~~(iv)~~(iii) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

(B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;

(C) Marinas to be developed in waters subject to public trust rights, other than those created by dredging upland basins or canals for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;

(D) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure will result from the location of the marina. In compliance with 33 U.S.C. 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards 15A NCAC 02B .0200 adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption as determined by the NC Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(E) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the State or deeded by the State;

(F) Marina basins shall be designed to promote flushing through the following design criteria:

(i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and

(ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;

(G) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;

(H) Marinas shall be located and constructed so as to avoid impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;

(I) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality as determined by the Division of Water Resources.

(J) Marina design shall comply with all applicable EMC requirements 15A NCAC 02B .0200 for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);

(K) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;

(L) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;

(M) All applications for marinas shall be reviewed by the Division of Coastal Management to consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and

(N) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.

(6) Piers and Docking Facilities.

(A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access or to support a water dependent use that cannot otherwise occur;

(B) The total square footage of docks, platforms, and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000

square feet to limit shading impacts to the substrate. In calculating the total square footage, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;

(C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;

(D) A boathouse shall not exceed 400 square feet except to accommodate a documented need, provided to the Division of Coastal Management by the applicant for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water to the bottom edge of the roofline, and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;

(E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;

(F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;

(G) Pier and docking facility length shall be limited by:

(i) not extending into the channel portion of the water body; and

(ii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals, or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property.

(iii) Notwithstanding Subparts (i) and (ii) of this Part, the proposed pier or docking facility shall not be longer than the pier head line established by the piers or docking facilities along the same contiguous shoreline having the same land use, nor longer than one-third the width of the water body. This restriction does not

apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public.

(H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot for each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

(J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(7) Bulkheads

(A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;

(B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to coastal resources;

(C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;

(D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:

(i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank;

(ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unusual geographic or geologic features;

(iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners; and

(iv) the property to be bulkheaded is in a non-oceanfront area.

(E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.

(8) Beach Nourishment

(A) Beach creation or maintenance shall be allowed to enhance water related recreational facilities for public, commercial, and private use if consistent with all of the following:

(i) Beaches are located in areas where they have historically been found due to natural processes;

(ii) Material placed in the water and along the shoreline shall be clean sand. Grain size shall be equal to that found naturally at the site;

(iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;

(iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation beds as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i);

(v) Material shall not be placed on any submerged bottom with shellfish resources as identified by the Division of Marine Fisheries during the permit review; and

(vi) Beach construction shall not cause filling of adjacent navigation channels, canals, or boat basins.

(B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;

(C) Material from dredging projects may be used for beach nourishment if:

(i) it is first handled in a manner consistent with dredged material disposal as set forth in 15A NCAC 07H .0208;

(ii) it is allowed to dry prior to being placed on the beach; and

(iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material

shall not be placed directly on the beach by dredge or dragline during maintenance excavation.

(D) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any significant adverse impacts of the original work; and

(E) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.

(9) Groins

(A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;

(B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

(C) Groins shall pose no threat to navigation;

(D) The height of groins shall not exceed one foot above normal high water or normal water level;

(E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides the Division of Coastal Management a design showing that more structures are needed for shoreline stabilization. The groin structures shall be designed by an individual who meets any North Carolina occupational licensing requirements for the structures being proposed.

(F) "L" and "T" sections shall not be allowed at the end of groins; and

(G) Riprap material used for groin construction shall be free from loose dirt and of a size sufficient to prevent its movement from the site by wave and current action.

(10) "Freestanding Moorings".

(A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure, or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;

(B) Freestanding moorings shall be permitted only:

(i) to riparian property owners within their riparian corridors;

(ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan; or

(iii) is associated with commercial shipping, public service, or temporary construction or salvage operations.

(C) All mooring fields shall provide an area for access to any moorings and other land based operations that shall include wastewater pumpout, trash disposal, and vehicle parking;

(D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure will result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption as determined by the Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;

(F) Moorings shall be located and constructed so as to avoid impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;

(G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC in accordance with 15A NCAC 02B .0225.

(H) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;

(I) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;

(J) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;

(K) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and

(L) The type of material used to create a mooring must be of a design and type of material so as to not present a hazard to navigation or public safety.

(11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:

(A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;

(B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, beds of submerged aquatic vegetation as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i), coastal wetlands, public trust right, or public trust usage; and

(D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.

(12) "Submerged Lands Mining"

(A) Development Standards. Mining of submerged lands shall meet all the following standards:

(i) The Division of Coastal Management shall evaluate the biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction for significant adverse impacts and a protection strategy for these sites provided with the State approval request or permit application;

(ii) 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;

(iii) Mining shall avoid archaeological resources and shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

(iv) Mining activities shall not be conducted on or within 500 meters of biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;

(v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and

(vi) Mining activities shall not negatively affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.

(B) Permit Conditions. Permits for submerged lands mining shall be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:

(i) Monitoring by the applicant to ensure compliance with all applicable development standards; and

(ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in 15A NCAC 07H .0208.

(D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and

(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) 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; 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:

(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 biological communities identified by the Division of Marine Fisheries or the 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 Natural and Cultural Resources and unique geological features as identified by the State Archeologist pursuant to G.S. 113A-113(b)(4)(g) that require protection from uncontrolled or incompatible development;

(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; 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.

(C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards.

History Note: *Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-115; 113A-115.1; 113A-124; 113-229;*
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