

NC COASTAL RESOURCES COMMISSION (CRC)
November 17-18, 2010
NOAA/NCNERR Auditorium
Beaufort, NC

Present CRC Members

Bob Emory, Chairman
Joan Weld, Vice-Chair

Chuck Bissette
Renee Cahoon
Charles Elam
Bill Peele
Veronica Carter

Ed Mitchell
Lee Wynns
Benjamin Simmons (absent 11/17/10)
Patrick Joyce

Present CRAC Members

Dara Royal, Chair
Frank Rush (Co-Chair)

Bob Shupe
Charles Jones
Tim Tabak
Ray Sturza
Richard Newman
Dave Weaver
Christine Mele
Bill Morrison

Wayne Howell
Webb Fuller
J. Michael Moore
Debbie Smith
Spencer Rogers
Joe Lassiter
Michelle Duval (for Anne Deaton)
Joe Beck

Present Attorney General's Office Members

Jennie Hauser
Christine Goebel

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. Commissioner Joyce read the Evaluation of his Statement of Economic Interest as required by the State Ethics Commission.

Angela Willis called the roll. David Webster, Jerry Old, James Leutze and Melvin Shepard were absent. Bob Emory stated he was familiar with the Mayor of Edenton. Renee Cahoon stated she is an acquaintance with the attorney representing the Petitioner in the variance request. Lee Wynns stated he is also familiar with the attorney representing the Petitioner in the variance request. Each Commissioner reported no conflict of interest nor an appearance of conflict based on the matters before them. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES

Lee Wynns made a motion to approve the minutes of the September 2010 Coastal Resources Commission meeting. Chuck Bissette seconded the motion. The motion passed unanimously (Weld, Bissette, Cahoon, Elam, Peele, Carter, Wynns, Joyce) (Mitchell absent for vote).

EXECUTIVE SECRETARY'S REPORT

DCM Director Jim Gregson gave the following report.

NOAA Meeting

Last week North Carolina hosted the NOAA Southeastern Regional Meeting here on Pivers Island. Participants included coastal program managers and National Estuarine Research Reserve staff from North Carolina, South Carolina, Georgia and Florida, plus officials from NOAA and Sea Grant. There were 41 participants at the meeting and 10 who participated online. During the meeting we discussed overviews of the coastal management program and NERR program from each state, strategies for sea level rise planning, using the NERR sites as platforms for monitoring invasive species and sea level rise, an update on the Governor's South Atlantic Alliance (all four states were present), and ideas for promoting more collaboration among the southeast coastal programs and Reserves.

Reserves LAC Meetings

The Local Advisory Committees for seven National Estuarine Reserve and Coastal Reserve sites met earlier this month to discuss management of the reserve sites. The committees of local residents, partners and leaders provide DCM staff with guidance and feedback regarding reserve management. At each meeting Rebecca Ellin presented updates on Reserve operations, state and federal budget, and rules and policy review; and a review of the 2005-2009 NCNERR 312 accomplishments and program suggestions. Each committee also reviewed the LAC draft operating procedures in detail and received comments from members. The document will become effective in 2011. Each site manager gave an update on the activities at their site, and members were invited to share their thoughts, questions, and concerns.

Clean Marina

Three additional coastal marinas have been certified as North Carolina Clean Marinas, a designation given to marinas that go beyond the state's environmental regulations. The Joyner Marina in Carolina Beach, River Dunes Marina in Oriental, and Manteo Waterfront Marina earned the status as North Carolina Clean Marinas. In addition to the three newcomers, 14 coastal marinas have been recertified as North Carolina Clean Marinas in 2010. Pat Durrett, our Clean Marina Program Coordinator, will be here tomorrow to discuss this program.

Staff News

Scott Kucera joined the division on October 11 as the reserve education coordinator in the Beaufort reserve office. Scott has a strong background in public education development, implementation and administration. He worked with Carolina Ocean Studies and the N.C. Maritime Museum developing and leading estuarine programs. Scott comes to us from the Ocean Isle Foundation, Inc. where he served as executive director of the Museum of Coastal Carolina and Ingram Planetarium handling the administrative duties of running facilities and staff and

supervising educational activities. Washington field representative Kelly Spivey and his wife, Jennifer, welcomed twin boys, Graham and Layton, on October 5. DCM's attorney Ward Zimmerman and his wife Sara welcomed their second son, Grey Alexander Zimmerman on November 15.

Finally, many of you know Patti Fowler, acting section chief of Environmental Health's Shellfish Sanitation and Recreational Water Quality Section. Patti suffered a major heart attack last week while she was in Biloxi, MS for a conference. She is currently in ICU at Gulfport Memorial Hospital. I'm told that she is improving, and it is hoped she will move out of intensive care sometime this week.

CHAIRMAN'S COMMENTS

Chairman Emory stated that Robin Smith, DENR Assistant Secretary for Environment, is present today.

Robin Smith stated the Governor has issued Executive Order #70 which has to do with Rulemaking. The Governor has heard a number of complaints from citizens around the state about rules that are unnecessary, outdated or burdensome. This Executive Order addresses the review of existing rules and applying new principles to rule amendments. The process creates an opportunity for citizen suggestions on existing rules. OSBM is the lead agency and will screen the citizen comments. OSBM will then ask the agencies to address the comments. In our Department we have a large body of rules that are developed by Commissions. The agency head for these rules will be the Chairman of each Commission. The Chairman will certify that the CRC rules meet the Executive Order. Ms. Smith also stated this will be a difficult budget year, which begins on July 1.

Chairman Emory stated this was the third year to speak at the Shape of the Coast. After each one of these conferences someone comes up to tell me how impressed they are with the scope and complexity of what the Commission is dealing with. There was also a good stakeholder meeting held on sandbags prior to the beginning of the CRC meeting. The sandbag stakeholder group will meet again prior to the February meeting.

VARIANCES

Town of Edenton (CRC-VR-10-07) Non-water dependent use
Christine Goebel

Christine Goebel of the Attorney General's office represented Staff. Ms. Goebel stated Hood Ellis, Counsel for Petitioner is present and will represent Petitioner. Ms. Goebel stated the Petitioner is a municipal corporation located in Chowan County and owns Colonial Park adjacent to the Chowan River. In July 2010, the Petitioner applied for a CAMA Major permit to move the 1886 Roanoke River Lighthouse from its current location on the park's upland onto pilings in the Petitioner's boat basin within the Chowan River. The Commission's rules limit non-water dependent structures from being placed over public trust and estuarine waters. This area is an Urban Waterfront as defined by 7H .0209(g); however the lighthouse does not fit within the Commission's rules for allowable structures. Ms Goebel reviewed the stipulated facts of this variance request. Ms. Goebel further stated that Staff and Petitioners agree on two of the four

statutory criteria which must be met in order to grant the variance request. We agree on the first factor that strict application of the rules would cause the Petitioner unnecessary hardship. We do not agree on the second criteria of peculiarity. It is the Petitioner's choice to put the lighthouse over the water and not adjacent to the shoreline in order to meet the tight stimulus grant deadline. The current site on the Colonial Park upland could meet the Commission's Urban Waterfront rules. Staff believes the hardships result from actions taken by the Petitioner. It is the grant deadline and the Petitioner's decision to propose the over-water location instead of pursuing an upland location that causes the hardship. Both parties agree on the fourth factor that the variance request will be consistent with the spirit, purpose and intent of the rules; will secure public safety and welfare; and will preserve substantial justice.

Hood Ellis represented the Petitioner and stated Anne-Marie Knighton, Edenton Town Manager, and Paul Waff, the Town's contractor are also present to answer any questions the Commission might have. Mr. Ellis showed a photo of the site and a model of the lighthouse. Mr. Ellis stated that he is before the Commission to request that the Commission join the State and the Town to grant a variance that would permit the realization of putting the last remaining screw pile lighthouse in the United States back in service as an interactive historical setting for generations to enjoy. Mr. Ellis reviewed the stipulated facts which he contends supports the granting of this variance request. Petitioners do agree with Staff on the first and fourth criteria. On the second criteria, we disagree with Staff as our engineers say that we will jeopardize the bulkhead. On the third criteria Staff focuses on the land site and does not focus on the water site. There is contamination on the site and our engineers do not believe it can be remediated. We want to put the lighthouse on the water because the Town and the State want to restore the lighthouse. The lighthouse will be a historic site and will be open to the public. The benefits of the public outweigh the minimal impacts to the resources as outlined in the CAMA permitting process.

Renee Cahoon made a motion that strict application of the development rules, standards, or orders issued by the Commission will cause the Petitioner unnecessary hardships. Chuck Bisette seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bisette, Cahoon, Elam).

Renee Cahoon made a motion that hardships result from conditions peculiar to the petitioner's property. Joan Weld seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bisette, Cahoon, Elam).

Renee Cahoon made a motion that hardships do not result from actions taken by the Petitioner. Ed Mitchell seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bisette, Cahoon, Elam).

Renee Cahoon made a motion that the variance requested by the petitioner will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; will secure public safety and welfare; and will preserve substantial justice. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bisette, Cahoon, Elam).

This variance request was granted.

PRESENTATIONS

CRC Priorities and Direction

Bob Emory

Chairman Emory stated we must take a deliberate look at rule making. With the budget, we don't know how much time we will have to work on things, but I would like to see the Commission get back to looking at shoreline stabilization.

Draft Program Assessment & Five Year Strategy 2011-2015 (CRC 10-33)

Guy Stefanski

Guy Stefanski stated this will be the fifth strategic plan developed. Section 309 of the Coastal Zone Management Act provides non-matching federal funds for program enhancements. States conduct a detailed program assessment and develop a five year enhancement strategy. There are nine program enhancement areas, as determined by NOAA, and these include wetlands, coastal hazards, public access, marine debris, cumulative/secondary impacts, special area management plans, ocean resources, energy/government facility siting, and aquaculture. Coastal hazards and ocean resources will form the basis of our next plan. The first program change in the coastal hazards strategy calls for the implementation of a statewide, regional-based beach and inlet management plan for North Carolina. The first year of the strategy will focus on Science Panel discussions on six categories of relevant variables to determine coastal hazards that are applicable to coastal planning. The Science Panel and stakeholder will assist in identifying coastal processes and strategies for implementing the BIMP. Data included in the BIMP will be provided to state and local communities to assist in developing future land use and hazard mitigation strategies, environmental review and permitting of mitigation strategies, non-beachfill mitigation strategies, economic and social considerations for cost-benefit studies, identification of funding sources, types of coastal mitigation projects to be considered and prioritization of coastal mitigation projects. At the end of the five years there will be statewide implementation of the BIMP per the four management regions, revised CRC rules, a set of policies addressing project funding, objective criteria for prioritization of projects based on public funding limitations, and education and outreach efforts and materials. The second program change in coastal hazards is the development of new and revised estuarine shoreline management rules. We will continue to develop new and revised estuarine shoreline management rules and policies. This will utilize the following four major initiatives: NCNERR Bulkhead Study; UNC Living Shorelines Study; DCM Marsh Sills Evaluation Project; and DCM's Estuarine Shoreline Mapping Program. The final outcomes of this program change will be analysis and utility of estuarine shoreline mapping data, modified General Permit for marsh sills, new and/or revised estuarine shoreline management rules/strategies, and public education and outreach. The third program change under the coastal hazards strategy is the development of a sea level rise policy, land use planning guidelines, and updated assessment report. The North Carolina Sea Level Rise Assessment Report prepared by the CRC's Science Panel on coastal hazards recommends the CRC adopt a rise of one meter by 2100 as a planning tool. This report will be updated every five years as necessary. The outcomes of this program change will be updates to subchapter 7M policies on sea level rise. This policy will be adopted as the enabling mechanism for changes to the regulatory program. Another outcome is updating the 7B land use planning guidelines to

require local governments to begin planning for sea level rise. The program change in the ocean resources strategy is the development of a coastal and marine spatial planning Memorandum of Agreement and recommendations report to better manage North Carolina's coastal and marine resources. The states are developing coastal and marine spatial planning as a decision making tool. This is a public process of analyzing and allocating special and temporal distribution of human activities in marine areas. It will outline and characterize the marine resources available and show where they are located as well as be a spatial comparison of current and proposed activities highlighting potential user conflicts. Final outcomes of this program change will be a Memorandum of Agreement, the CMSP recommendations report, and changes to ocean resource regulations. The strategy relates to several CRC priorities including the BIMP, estuarine shoreline stabilization, planning for sea level rise, land use planning, management of ocean resources, and planning for wind energy facilities. This strategy will begin on July 1, 2011.

7B Land Use Planning Guidelines Review – Update Frank Rush

Frank Rush stated this is a brief update from the 7B LUP review subcommittee. We have been working on these issues for the past three to four months with DCM staff. There was a major revision to the land use plan guidelines in 2002. This is more of a review. We have had three subcommittee meetings so far. The first meeting was a review of the rules. The second meeting was minor additions and clarifications to the existing rules. The most significant issue the committee has addressed so far is the issue of sea level rise. After discussing it at our October meeting, our subcommittee is recommending option one outlined in the CRC packets which is to require an assessment to recognize public infrastructure and facilities that could be vulnerable to sea level rise. This will require more discussion by the subcommittee since this is such a big issue.

CRAC UPDATE

Dara Royal stated the CRAC would like to welcome Commissioner Joyce. There were two items on the CRAC agenda. The first was a brainstorming discussion for ways in which our coastal program can incentivize the provision of public access in conjunction with project permitting. There were several worthwhile ideas that the CRAC and staff can work together to develop. Some of the ideas generated include increasing coordination with permit commenting agencies to identify mutual priorities and standards for encouraging public access; prioritizing DCM public access money to acquire and preserve traditional access sites; and pursuing expanded public-private partnerships under the conservation tax credit program. Steve Underwood presented some long anticipated highlights from the Beach and Inlet Management Plan and we now await the final document. Members of the Council are of the opinion that now is the right time to pursue a dedicated State funding source for beach and inlet management. Having this plan, plus a dedicated state funding source would put North Carolina in a strong competitive position relative to other states to make the case for continued federal cost share. After three years, this is the last time I will be appearing before the CRC as the Chair of the Advisory Council. At the February meeting Kill Devil Hills Mayor Ray Sturza will take over with Frank Rush remaining in his role as Vice Chair. I would like to thank the entire Commission for your interest in and ongoing support of the Advisory Council.

PRESENTATIONS

Sandbag Stakeholders Meeting Summary (CRC 10-34)

Mike Lopazanski

Mike Lopazanski stated the first sandbag stakeholder meeting was an overview of the issue and there was discussion of specific issues such as removal of sandbags prior to beachfill, the covered and vegetated requirements, and the use of other criteria in permitting and community management of sandbags. At the second stakeholder meeting in October the group discussed how the houses on the beach are the core issue. There was discussion that something similar to the Upton-Jones amendment to the federal flood insurance program was needed to remove structures from the beach before they are destroyed. The group discussed FEMA national flood insurance program involvement and methods of dealing with structures that are condemned frequently such as considering piling depths, permit conditions for removal and a repetitive loss trigger. Mack Paul offered to develop some ideas for a community sandbag management strategy and Sam Pearsall suggested an idea for a strategy that involved a conservation tax credit in exchange for advance agreement on removal of the structure. At the most recent stakeholder meeting Sam Pearsall discussed the tax credit and how it may reduce the level of development in inundations areas, protect the tax payers, provide an opportunity for property owners to plan ahead, and provide compensation to property owners. Mack Paul discussed his ideas on community management which consisted of focusing on areas where this a realistic solution to erosion, an umbrella permit to communities for sandbags, requiring criteria similar to the static line exception, limiting the ability to repair, or the requirement of positing a bond. The group discussed the number of bags not meeting the CRC's rules, the effect of the lack of maintenance on removing the bags, FEMA involvement and the situation in Nags Head. Mayor Oakes told the group that there are 26 structures declared a nuisance and half have been removed. The threat of daily fines motivated the property owners. DCM has reassessed the structures and discussed enforcement procedures. The group discussed a hazard mitigation program may the avenue to take or the possibility of Water Resource Act funds to assist local governments. Another sandbag stakeholder meeting will be scheduled prior to the February CRC meeting.

Re-assessment of Sandbag Removal Priorities (CRC 10-45)

Ted Tyndall

Ted Tyndall stated an intensive inventory process took place in early 2008 that allowed staff to prioritize which sandbag structures should be given the highest priority for removal through enforcement action. Session Law 2009-479 established a moratorium on certain action of the CRC that included preventing sandbag removal based solely on time limits. This moratorium expired September 1, 2010. Staff received clear guidance at the September CRC meeting to continue enforcement of the sandbag rules, including enforcing time limits. Field staff has been directed to revisit the sandbag structures in their area and to assess their condition relative to the assessment that had been conducted in 2008. The reassessment was completed in October and revealed that those structures that ranked the highest back in 2008 remained the highest priorities with the exception of the five structures that have been demolished. Staff has taken into consideration municipalities that have issued condemnation orders or have declared such structures nuisances as part of this reassessment. The Town of Nags Head, where the most egregious sandbag structures are located, has taken an active role in the removal of threatened

houses along its beaches and has provided staff with a list of such structures and their locations. Staff is currently researching the ownership of approximately 12 properties that remain the most egregious from 2008 and another four that are on top of the list based on current conditions. Formal enforcement procedures will begin as soon as ownership verification is complete.

Draft Inlet Hazard Area Rules Stakeholder Meetings Summary (CRC 10-36)

Jeff Warren

Jeff Warren stated at the September meeting a draft set of inlet hazard area policies was presented. These draft policies were presented to local communities with inlets. The CRC directed staff to take the draft policy to each community containing an IHA to receive comments and input on the proposed inlet hazard area changes and potential inlet development policies. Direct meetings have taken place in each community. We have received several written comments for consideration. Ocean Isle Beach recommended that the proposed inlet hazard areas and associated rules be tabled until further information is gathered on the proposed setback factors. They requested a reduction in size of the proposed inlet hazard area for Shallotte Inlet and requested that the setback reference to landward most adjacent structure be deleted. The Town of Holden Beach would like for the CRC to verify the data and formula used to determine the proposed IHA relocation and stated that it appears to be capricious and arbitrary. The Town requested clarification of the data used to determine the setback line and whether it should be moved beyond any known erosion data. In a resolution from the Town of Holden Beach the Town said that the modification and expansion of the inlet hazard area has significant potential to negatively impact properties in the Town. The Town of Oak Island did not support the proposed inlet hazard area boundary update and revised development rules and stated that a one size fits all approach may not be the most effective way to manage inlet hazard areas. The Town stated that there are too many unknown variables that could impact properties taken into new inlet hazard areas. The Village of Bald Head Island commented that Bald Head may not be properly categorized as an inlet hazard area. Bald Head suggested that a new classification be developed for Bald Head Island or that the rules and boundaries for Bald Head not be developed until after the study of the Cape Fear River entrance is complete. Bald Head also suggested changing the name of inlet hazard area to channel influence area or inlet proximity area. The Town of Carolina Beach was concerned about how the inlet hazard area boundary change would affect insurance and loans. The existing IHA contains no buildings or structures, but the new boxes would include 109 buildings. They also wanted to wait until the erosion rates were complete before expanding the inlet hazard area zone. The Town of Wrightsville Beach was concerned about adding 28 additional properties in a restrictive area and requested that the CRC not update the boundaries of the inlet hazard area. The Town of Topsail Beach stated in their comments that they do not recommend the adoption of the inlet hazard boundary update. The Town was concerned about the designation having a substantial impact on the development controls and flood insurance costs for property owners and opposed any expansion of the IHA in the Topsail Beach inlet area. The Town of North Topsail Beach commented that there is not a verifiable need for an expansion and that the negative economic impacts to the Town and private property owners outweigh any perceived benefits of the expansion. The Business Alliance for a Sound Economy "BASE" sent written comments as well which stated that they have concerns with both the expanded boundaries and the potential changes to the development rules. They are

concerned that the primary reason for making the changes is because the inlet hazard areas have not been updated since 1979.

Joan Weld made a motion to direct DCM Staff to suspend the inlet hazard area boundary changes until the erosion rates are completed for the entire oceanfront including inlets. Lee Wynns seconded the motion. The motion passed unanimously (Simmons, Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bissette, Cahoon, Elam).

CRC/CRAC Meeting Format Subcommittee Report (CRC 10-37)
Bob Emory

Bob Emory stated at the September CRC meeting a subcommittee was appointed to examine the format of CRC and CRAC meetings. There were concerns that the CRC and CRAC were not working as efficiently as they could be and their interaction could be better. The subcommittee has come up with several recommendations. The first recommendation would be to establish two new committees. The first committee would focus on estuarine and ocean systems and the second committee would focus on issues in the ocean hazard areas. Issues in an AEC for which there is not a standing committee can be handled by an ad hoc committee or assigned to a standing committee. The CRC chair will assign issues to the committees and can assign cross-cutting issues to either committee based on an assessment of workload and member's expertise. The Commission would not act on committee items at the same meeting that the committee reports out to the Commission. This will ensure that CRC members have an opportunity to review the information and deliberate on discussion. CRC and CRAC members will be asked to indicate their preference for committee assignment and the Executive Committee will make the final assignments. The two committees would not meet concurrently so anyone wanting to sit in on both committees could do so. All CRC and CRAC members will have the right to participate in committee discussions, but committee chairs may limit participation to committee members only. Committee members should sit at the front of the room to help identify who is on the committee. Committee chairs should begin each meeting by going over the ground rules. CRAC members will wear nametags provided by DCM to identify them. The CRAC would not meet if there are committee meetings scheduled. Land use plan certifications will be kept as consent items on the CRC's agenda unless there are specific issues that would be better discussed in committee. Both committees would have the option of sending the issue to the CRAC for further discussion. Committee reports would need to be clear and detailed to give the full CRC a complete picture of the committee's discussion.

Charles Elam made a motion to accept and implement the Meeting Format Subcommittee's recommendations. Lee Wynns seconded the motion. The motion passed unanimously (Simmons, Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bissette, Cahoon, Elam).

15A NCAC 07K .0214 Installation and Maintenance of Regulatory Signs Exempted
Jim Gregson

Jim Gregson stated the Division is having an issue with the installation of regulatory signs and trail markers. There have been inconsistencies in how these structures have been treated over the

years with respect to the size and type of sign and whether they required a permit or not. In 7H .0209(d)(1) there is a clear indication that the Commission considers the installation of signs to be development. Staff recognizes that there are certain types of signs, such as commercial advertisements that should be subject to the CAMA permitting process when located within an AEC as they are a private use in a public trust area. There are other types of signs that because of their regulatory or informational nature that may be appropriate in an AEC. Staff's position is that the use of regulatory or information signs used by state, federal and local government agencies is an activity that occurs on a regular and customary basis and has little or no resource impact and should be exempted by rule from the CAMA permitting requirements. This will be similar to the approach the CRC has taken on sand fencing. Rule language has been proposed that would prevent signs and markers from installation in areas or in a manner that would impact public trust rights, emergency vehicle access or navigation.

Veronica Carter made a motion to send 15A NCAC 07K .0214 to public hearing. Pat Joyce seconded the motion. The motion passed unanimously (Simmons, Mitchell, Joyce, Wynns, Peele, Weld, Carter, Bisette, Cahoon, Elam).

Review of Existing Statutes and Rules to Address Offshore Energy Exploration (CRC 10-39)
Mike Lopazanski

Mike Lopazanski stated in response to the BP Deepwater Horizon explosion and resulting oil spill, the General Assembly took some specific action to address the possibility of there being some affect on the State. Session Law 2010-179 addresses the liability for damages caused by the discharge of oil into State coastal waters or offshore waters, added information requirements for State consistency review, directed the CRC to review existing laws and regulations pertaining to offshore energy regulation and production, directed the Department of Crime Control and Public Safety to review the State oil spill contingency plan, and directed DENR to review the limitations on recovery of damages to public resources or the cost of oil or other hazardous substance cleanup pursuant to the Oil Pollution and Hazardous Substance Control Act. The North Carolina coastal program consists of the administrative rules and policies of the CRC as well as local land use plans. The actions of other North Carolina state agencies are also to be consistent with the N.C. coastal program. This is in accordance with Executive Order number 15 issued by Governor Hunt. Not only can consistency be used for local permit decisions but also allows the state to comment on a federal action or permit under the federal consistency provisions. Federal activities must be consistent to the maximum extent practicable. After a coordinated state review, DCM issues either a consistency concurrence or denial. DCM denials can be appealed to the U.S. Secretary of Commerce. Consistency reviews are conducted for projects such as offshore oil and gas drilling and Army Corps of Engineer's dredging and beach nourishment projects. The CAMA amendments specifically speak to the consistency review of an offshore project and incorporates definitions associated with the Commission's 7M .0400 coastal energy policies, the Oil Pollution and Hazardous Substance Control Act as well as the federal requirements for oil spill response plans. The Oil Pollution and Hazardous Substance Control Act compliments the federal Water Pollution Control Act and establishes liability for oil spills. The Act contains reporting requirements, requires corrective actions, restitution to State and local governments for cleanup costs and imposes civil penalties in the case of intentional releases or those caused by negligence. The amendments to the Oil Pollution and Hazardous

Substance Control Act removes any cap on the liability associated with spills occurring in state waters. The current federal cap is 75 million dollars. Additionally, the General Assembly has expanded the liability provisions to include spills associated with exploration activities as well as from the use of chemical dispersants. Other amendments, such as expanding the definition of offshore waters to include the Gulf of Mexico are reflective of the uncertainty of how the Gulf spill might affect coastal North Carolina. The amendments associated with the uncertainty surrounding the broader impacts of the BP spill incorporate into law the federal requirements for spills and other discharges, assessment of alternatives, and an analysis of a spill causing violation of state or federal water quality standards. Under federal requirements, all offshore activities must include an assessment of spills and other discharges that address bonds, blowout scenarios and a plan for how spills including worst case scenarios would be handled. This type of information is provided to the state for review as part of the consistency determination. The 7M coastal energy policies echo some of these same requirements as well as referencing the federal requirements. At the federal level, the BOEM has promulgated new regulations that focus on workplace safety. While there was intense focus on the environmental impacts of the BP spill, we need to keep in mind that 11 people died in that explosion. There are new rules addressing well design and construction with a focus on blowout preventers that includes third party inspections. The safety rules are also intended to address all phases of activity from construction to decommissioning. The BOEM expects additional drilling safety measures to be proposed in the near future. Since the discussion and subsequent lifting of east coast drilling moratoriums there has been renewed interest in studying offshore energy exploration in North Carolina. Prior to these discussions DCM initiated its own ocean policy study resulting in recommendations that, together with the EMC, resulted in proposed rule changes to address the development of wind facilities as well as a broadening of the Commission's coastal energy policies to be more including of all ocean-based energy development. While the CRC is the latest group tasked with a review of the issues, the Governor's scientific advisory panel is still active and nearing completion of its work. A draft report is being prepared and public meetings to be held in coastal areas are scheduled for the new year. Given the likelihood of additional changes at the federal level and pending recommendations of the Governor's scientific advisory committee, staff is not recommending any action at this time. It is expected that we will have additional information available at the February meeting and we are coordinating with the Department of Commerce for a presentation of their recommendation. In the meantime, the amendments to 7H .0106, 7H .0208, and 7M .0400 allow the siting of wind energy facilities in state waters as well as broaden the coastal energy policies to incorporate all manner of ocean-based energy development as an action item on the Commission's agenda. Staff will be recommending adoption of these rule changes.

Draft Sea Level Rise Policy – Stakeholder Meeting Summary (CRC 10-40) Tancred Miller

Tancred Miller stated the draft sea level rise policy was taken out for stakeholder input in Raleigh and Morehead City. Feedback from both stakeholder meetings was constructive. A revised draft is before the CRC based on comments received during the two stakeholder meetings. The only action staff is requesting from the Commission is to review the revised draft and make any changes the CRC feels are necessary. Staff will continue to circulate the draft sea level rise policy to gather input.

After reviewing the draft policy, the CRC directed staff to take the draft policy out to local governments to receive input.

Beach and Inlet Management Plan Executive Summary and Recommendations (CRC 10-41) Steve Underwood

Steve Underwood stated the final complete BIMP will be out by the end of this year. The framework for the BIMP is the culmination of past efforts, legislative actions, studies and recommendations. The first one was HB 1840 which was the genesis of the BIMP. We have included more details in the BIMP than the list of items in HB 1840. These seem to be based around one predominate idea of sand management. The Bill was a good start, but the plan needed more. The BIMP recommendations were derived from numerous summits and meetings with a large cross-section of stakeholder groups. The BIMP advisory committee was composed of representatives from federal and state agencies, local governments, academic institutions, and non-profit organizations. The technical work group was comprised of DENR Division representatives. The identification and collection of pertinent data is critical in the understanding of any natural system. These also helped us when we divided the coast into regions. The development of a Beach and Inlet Management Plan was a key recommendation of the Coastal Habitat Protection Plan. The BIMP relies heavily on the CHPP as a data source pertaining to these critical habitat types. The combination of these two high level documents will help in many ways. North Carolina beaches and inlets have tremendous economic importance to the state, providing billions of dollars in economic value through business and tourism, residential and commercial property value, water access for commercial and recreational fisherman, and the marina and boat building industries. The relationship of the economics to the environment is crucial and both need each other. We are offering the BIMP as the state's new tool for our toolbox. Our coast is not only enjoyed by those that live here, but many others that choose to spend their vacations along our coast. Another thing that can make this environment very unique and challenging is the hurricanes and nor'easters we can experience here in North Carolina. This is all the more reason for our coastal program to have a long-term plan for sustainability along our coast. A regional approach was developed so the entire coastal environment could be taken into account, including natural processes as well as the effect of human activities. Planning projects on a regional scale balances environmental and economic needs while facilitating collaboration and pooling local resources. For projects in the same region there is the potential to save time and reduce costs if the environmental, geotechnical and monitoring studies for similar projects are combined. The BIMP divides the North Carolina coast into four main beach and inlet management regions and five sub-regions. First the coast was divided into four main primary regions. The coast was then further divided into localized regions. The State should establish a dedicated Beach and Inlet Management Fund administered by the Department of Environment and Natural Resources. The CRC has recommended that the fund could be used to support beach nourishment, relocation of structures encroaching on the beach, inlet channel realignment, dredging of navigation channels, inlets and waterways, and public beach, inlet and waterway access. State cost shares need to be established. There are 112 miles of developed shoreline that have received monies for either past beach fill projects, are currently part of a long-term USACE beach fill project or are actively involved in a USACE sponsored investigation to study the viability of a long-term beach fill project. Public and private entities

that benefit from the affected resource should contribute to its restoration and maintenance. State revenues pledged to the dedicated fund should be derived from the economic activity in the eight oceanfront counties where tourism and economic activity can be directly attributed to the beaches and inlets. These coastal resources should earn their keep. In the past, the political will to act in response to shoreline erosion or inlet problems was reached only in the immediate aftermath of storm damage or some similar crisis. Active management based on planning and a secure financial foundation would be more effective than management by crisis. North Carolina should continue to aggressively seek federal shore protection projects and other federal financial support to meet its beach and inlet project needs as well as support for federal navigation projects. A stable source of funding for coastal communities could help to facilitate long-term planning and establish a predictable local match. Establishing project priorities should be vested at the local level, and coastal communities should have the flexibility to provide the required match in a manner best suited to local needs and priorities. The state should develop a funding strategy that takes into consideration numerous options to ensure a balanced approach to current and future changes along the coast. The state should initiate an economic cost-benefit analysis to determine the potential costs of a project by project alternative or for selecting another management alternative. The idea is a 100% beneficial use of dredged material. In this way, sediment lost during a federally declared disaster could be replaced at no cost to the local sponsor. The state and USACE have already recognized the importance of a cooperative relationship for successful implementation of the NCBIMP and regional sediment management. The state should promote and support development of innovative dredging technologies for the shallow-draft inlets as opposed to using side-cast dredges which do not place the dredged material onto the beach shoreline. With greater financial predictability from the state, innovative dredge designs and disposal techniques may be embraced by private industry. We will pursue data collection and monitoring in our five year strategy where we will be conducting workshops in all the regions. This data could also be the foundation of centralized datasets from each of the BIMP regions. Such datasets would be a necessary step in reducing local government costs in the development of programmatic regional environmental impact statements and would ensure this information is readily available for planning and emergency needs. Forward thinking policy is required to realize the full benefits of the plan. Support from North Carolina citizens including the Legislature, especially coastal citizens, is critical for BIMP success and implementation. This is what the CRC and CRAC have been doing. Without a forward thinking mindset our coast would look very different than it does now.

Clean Coastal Waters and Vessels Act Implementation (CRC 10-42) Steve Dellies and Pat Durrett

Pat Durrett stated in 1990 the Coastal Zone Reauthorization Act required management measures to address nonpoint pollution. The Clean Marina initiative was designed to satisfy the requirements of the Coastal Nonpoint Pollution Control Program which is jointly administered by the EPA and NOAA. North Carolina formed the Clean Marina program in 2000, which is administered by the Division of Coastal Management, and receives funding from the coastal nonpoint source program. The NCNERRS coastal training program, NC Sea Grant, NC Big Sweep, Albemarle-Pamlico national estuarine program and the Coast Guard auxiliary are all partners of the NC Clean Marina Program. The NC Clean Marina program is a voluntary initiative designed to show that marina operators can help safeguard the environment by using

specific best management practices and operations techniques. Some of the program incentives include attracting responsible boaters, generation of new sources of revenue, free publicity and recognition, and reducing environmental cleanup and disposal costs. A self evaluation begins the certification process followed by following Clean Marina guidelines and implementing best management practices. Once a completed application is received by the Division and a score of 80% or higher is achieved a Clean Marina representative will visit the site and ensure regulatory compliance. Some of the program benefits include a Clean Marina logo, flag and certificate, media exposure, website link, discounts and cruising guides and maps. Clean Marinas provide environmentally responsible boating education to customers.

The Clean Coastal Water and Vessel Act (SL 2009-345) addresses the discharge of sewage from a vessel into certain coastal waters and requires large vessel marinas to provide for pumpouts or install and maintain pumpout facilities. This Act requires vessel owners and operators of marinas in EPA designated no discharge zones (NDZ) to maintain records of pumpouts from marine sanitation devices. A designated no discharge zone is an area of a water body or an entire water body into which the discharge of sewage, whether treated or untreated, from all vessels is completely prohibited. The Clean Marina program has been coordinating implementation of the requirements with the Division of Water Quality and New Hanover County, specifically Wrightsville Beach.

Steve Dellies, Wrightsville Beach Stormwater Manager, stated one reason New Hanover County requested to establish a no discharge zone was due to the increase in swimming advisories and alerts being issued by DENR. There were no advisories in 2002, two in 2004, seven in 2005, and eleven in 2010. The second reason was due to the impaired nature of the waters in nearly all of New Hanover County which caused shellfishing restrictions. The UNCW Center for Marine Science was contracted by Wrightsville Beach to source track the bacteria. The goal was to attempt to identify the source of the bacteria in Banks Channel. There were eight sites tested from August 2007 through December 2009. The results were frequent human fecal contamination signals. Locations near marinas, yacht clubs, boat ramps and public docks averaged 40 percent. Researchers suspected boat-borne fecal sources since five of the eight sites had significant marine activity. Any interested party, group or local government can present their case to DWQ for a determination of a no discharge zone. The State submits an application to the EPA Regional Administrator for designation. New Hanover County's process began with contacting Coleen Sullins, DWQ Director. Ms. Sullins then assigned a point of contact that helped with working with the municipal and county representatives and helped assemble the draft application. There are three ways to establish a no discharge zone. The area can be an area of particular environmental importance when adequate pumpout facilities are available. The State determines protection and enhancement of waters require greater environmental protection than current Federal regulations and the EPA determines adequate facilities for the safe and sanitary removal or treatment of sewage are reasonably available. In areas of particular environmental importance the states does not have to show adequate and reasonably available pump-out stations. The areas can be of particular environmental importance if it protects human health, sensitive habitats and aquatic organisms, and other animals from adverse impacts. The third way to establish a no discharge zone is if the water is in a drinking water intake zone. Information required for the application includes a description of the water body and surrounding resources, pumpout data, vessel population and usage of subject waters, education and outreach

programs, and enforcement strategies. The UNCW report was completed in July 2008 and the New Hanover County no discharge zone was signed in January 2010. The NDZ includes all New Hanover creeks and unnamed tributaries and tidal creeks and extends out three nautical miles. Some of the current challenges include enforcement, education and evaluation. The U.S. Coast Guard, Wildlife, Marine Fisheries inspectors and local law enforcement can enforce the no discharge zone.

NC Coastal Reserves Rules and Policy Review Rebecca Ellin

Rebecca Ellin stated the North Carolina National Estuarine Research Reserve was designated in 1985 and 1991. The Coastal Reserve was created in 1989 per an amendment to the Coastal Area Management Act. CAMA stipulates that the coastal reserve shall be carried out in coordination with the NERRS. The NC Administrative Code includes the NCNERR within the Coastal Reserve. The Reserves are also State Nature Preserves. The CZMA established the National Estuarine Research Reserve System. CAMA formally establishes the NC Coastal Reserve. The Coastal Reserve rules define the purpose and functions of the program and also define user requirements. The State Nature Preserves Act defines the dedication of outstanding state lands as nature preserves and specifies the uses and management of the Reserve. The purposes of the Reserve are to protect representative coastal North Carolina ecosystems, conduct relevant research to inform sound management of coastal resources, increase understanding of coastal ecosystems and the effects humans have on them, and to accommodate compatible, traditional recreational uses. The rules and policy directives of the Reserve come from state law, the NC Administrative Code, State Nature Preserve dedication letters, management plan policies and local ordinances. However, there are several issues that are not addressed. With the issue of fireworks the Administrative Code, dedication letters and management plan policies do not have any language to address them. The result is permission is not granted based on incompatibility with purposes, maintenance and natural character as well as concerns about noise, pollution, fire and safety. We need to protect the Reserve resources, provide clarity to the public, and enhance enforcement capability. Campfires is another activity that the Administrative Code does not address, the dedication letters allow them by permit for research or management activities, and the management plan policies do not allow them unless they are for research or management activities. We learn about campfires on the Reserves after the fact and the dedication letters and management plan objectives are not enforceable. Another challenge is organized events. The Administrative Code, the dedication letters, and the management plan objectives do not address organized events and we need to be able to assess requests based on compatibility with the purposes of the Reserve, detrimental impacts, access, and safety. There is a lack of consistency among the directives across many topics and Reserve sites. There are unclear terms in the Administrative Code such as essential natural character, natural integrity, compatible, traditional, recreational, and detrimental that need to be clarified. The current rule and policy language is difficult to enforce and there is limited protection of the Reserve sites. There is no clear and consistent guidance for the public. We plan to examine and update the reserve use requirements found in the Administrative Code for managing activities at Reserves sites to promote effective management of the sites for defined purposes. We want to provide clear and consistent rules for the public. We also need to get the support of enforcement by the appropriate agencies. In 2009,

rule signs were installed at the Reserve sites. There is ongoing education through the publication of new site brochures and installation of new welcome and informational signs at all sites, and we are developing general public education programs to build an understanding of the purpose of the program and the need for stewardship.

2010 CHPP Annual Report (CRC 10-43)

Jimmy Johnson, DENR

Jimmy Johnson stated the overarching goal of the CHPP is the long-term enhancement of coastal fisheries associated with each coastal habitat. The 2010 CHPP updates information regarding the ecological functions, conditions, and threats to our coastal fish habitats. The CHPP has been circulated through the Marine Fisheries Commission, the Wildlife Resources Commission, and Environmental Management Commission. Once approved by the Coastal Resources Commission the 2010 CHPP will be sent to the Joint Legislative Commission on Seafood and Aquaculture for their review.

Charles Elam made a motion to approve the CHPP and send to the General Assembly. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Joyce, Peele, Weld, Carter, Elam) (Wynns abstained) (Simmons, Bissette, Cahoon absent for vote).

PUBLIC INPUT AND COMMENT

There was no public comment.

ACTION ITEMS

Rule Adoptions

Mike Lopazanski introduced the proposed rule amendments eligible for adoption.

15A NCAC 07H .0106 General Definitions

Lee Wynns made a motion to adopt 15A NCAC 07H .0106. Charles Elam seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Elam) (Simmons, Bissette, Cahoon absent for vote).

15A NCAC 07H .0208 Use Standards

Bill Peele made a motion to adopt 15A NCAC 07H .0208. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Elam) (Simmons, Bissette, Cahoon absent for vote).

15A NCAC 07M .0400 Coastal Energy Policies

Veronica Carter made a motion to adopt 15A NCAC 07H .0400. Joan Weld seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Carter, Elam) (Simmons, Bissette, Cahoon absent for vote).

Land Use Plan Certifications and Amendments

Mike Christenbury stated Staff recommends certification of the Oak Island Core Land Use Plan Amendment based on the determination that the amendment has met the substantive

requirements outlined within the 2002 7B Land Use Plan Guidelines and that there are no conflicts evident with either state or federal law or the state's coastal management program.

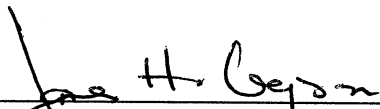
Veronica Carter made a motion to certify the Oak Island FLUP amendment. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Joyce, Peele, Weld, Carter, Elam, Wynns) (Simmons, Bissette, Cahoon absent for vote).

OLD/NEW Business

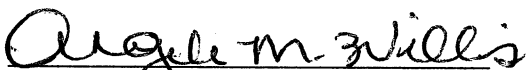
Chairman Emory stated the next CRC meeting is scheduled for February 24, 2011.

With no further business, the CRC adjourned.

Respectfully submitted,



James H. Gregson, Executive Secretary



Angela Willis, Recording Secretary