

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0201 ESTUARINE AND OCEAN SYSTEM CATEGORIES

Included within the estuarine and ocean system are the following AEC categories: estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines. Each of the AECs is either geographically within the estuary or, because of its location and nature, may significantly affect the estuarine and ocean system.

History Note: Authority G.S. 113A-113(b)(1); 113A-113(b)(2); 113A-113(b)(5); 113A-113(b)(6)b; 113A-124;
Eff. September 9, 1977;
Amended Eff August 1, 2000; August 1, 1998.

15A NCAC 07H .0202 SIGNIFICANCE OF THE SYSTEMS APPROACH IN ESTUARIES

The management program must embrace all characteristics, processes, and features of the whole system and not characterize individually any one component of an estuary. The AECs are interdependent and ultimately require management as a unit. Any alteration, however slight, in a given component of the estuarine and ocean system may result in unforeseen consequences in what may appear as totally unrelated areas of the estuary. For example, destruction of wetlands may have harmful effects on estuarine waters which are also areas within the public trust. As a unified system, changes in one AEC category may affect the function and use within another category.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-124;
Eff. September 9, 1977;
Amended Eff. August 1, 1998.

15A NCAC 07H .0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE AND OCEAN SYSTEM

It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

History Note: Authority G.S. 113A-102(b)(1); 113A-102(b)(4); 113A-107(a); 113A-107(b); 113A-124;
Eff. September 9, 1977;
Amended Eff. August 1, 2000; October 1, 1993; September 1, 1985.

15A NCAC 07H .0204 AECS WITHIN THE ESTUARINE AND OCEAN SYSTEM

The following regulations in this Section define each AEC within the estuarine and ocean system, describe its significance, articulate the policies regarding development, and state the standards for development within each AEC.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-124;
Eff. September 9, 1977;
Amended Eff. August 1, 1998.

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this does not include hurricane or tropical storm tides. Coastal wetlands may contain the following marsh plant species:

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

(10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DENR pursuant to G.S. 113-230 (a). (b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained.

Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational businesses along the seacoast.

The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing suspended organic and inorganic particles to settle out. In this manner, the nutrient storehouse is maintained, and sediment harmful to marine organisms is removed. Also, pollutants and excessive nutrients are absorbed by the marsh plants, thus providing an inexpensive water treatment service.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere.

Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this paragraph. Mowing or cutting of coastal wetlands by academic institutions associated with research efforts is allowed subject to approval from the Division of Coastal Management. Alteration of coastal wetlands is governed according to the following provisions:

- (1) Alteration of coastal wetlands is exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
 - (C) Alteration of the substrate is not allowed;
 - (D) All cuttings/clippings shall remain in place as they fall;
 - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
 - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule requires a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have an adverse impact on the habitat or fisheries resources.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124; Eff. September 9, 1977; Amended Eff. November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978.

15A NCAC 07H .0206 ESTUARINE WATERS

(a) Description. Estuarine waters are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

(b) Significance. Estuarine waters are the dominant component and bonding element of the entire estuarine and ocean system, integrating aquatic influences from both the land and the sea. Estuaries are among the most productive natural environments of North Carolina. They support the valuable commercial and sports fisheries of the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and reproduce. Of the 10 leading species in the commercial catch, all but one are dependent on the estuary.

This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy, fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The circulation of estuarine waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish, flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats, eel grass beds, salt marshes, submerged vegetation flats, clam and oyster beds, and important nursery areas.

Secondary benefits include the stimulation of the coastal economy from the spin off operations required to service commercial and sports fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations, and tourist related industries. In addition, there is considerable nonmonetary value associated with aesthetics, recreation, and education.

(c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system.

(d) Use Standards. Suitable land/water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(2); 113A-124;

Eff. September 9, 1977;

Amended Eff. August 1, 1998; October 1, 1993; November 1, 1991; May 1, 1990; October 1, 1988.

15A NCAC 07H .0207 PUBLIC TRUST AREAS

(a) Description. Public trust areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

- (1) the use of the body of water by the public;
- (2) the length of time the public has used the area;
- (3) the value of public resources in the body of water;
- (4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water;
- (5) whether the creation of the artificial body of water required permission from the state; and
- (6) the value of the body of water to the public for navigation from one public area to another public area.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used by the public for navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water quality standards, or cause degradation of shellfish waters are considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(5); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 2006; October 1, 1993

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which 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 may include: utility easements; docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins; navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches.
- (2) Before being granted a permit by the CRC or local permitting authority, there shall be a finding 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 stated management objective.
 - (B) Before receiving approval for location of a use or development within these AECs, the permit-letting authority shall find that no suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).
 - (C) Development shall not violate water and air quality standards.
 - (D) Development shall not cause major or irreversible damage to valuable documented archaeological or historic resources.
 - (E) Development shall not measurably increase siltation.
 - (F) Development shall not create stagnant water bodies.
 - (G) Development shall be timed to have minimum adverse significant affect on life cycles of estuarine and ocean resources.
 - (H) Development shall not impede navigation or create undue interference with access to, or use of, public trust areas or 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 as identified in the findings and goals of the Coastal Area Management Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable and prudent alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and will be implemented at the applicant's expense. These measures taken to mitigate or minimize adverse impacts may include actions that will:
 - (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 those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are officially designated and described by the N.C. Marine Fisheries Commission in 15A NCAC 3B .1405 and by the N.C. Wildlife Resources Commission in 15A NCAC 10C .0110.

- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission pursuant to Title 15A, Subchapter 2B .0216 of the N.C. Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance. In those estuarine waters and public trust areas classified as ORW by the Environmental Management Commission (EMC), no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or Marine Fisheries Commission (MFC) for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource values unless such degradation is temporary.
- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules. In defining SAVs, the CRC recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the SAV definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.
- (A) Navigation channels and canals may be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
- (B) All spoil material from new construction shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or marsh.
- (C) Spoil from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long term wetland impacts. Under no circumstances shall spoil be placed on regularly flooded wetlands.
- (D) Widths of the canals and channels shall be the minimum required to meet the applicant's needs and provide adequate water circulation.
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels.
- (G) Canals for the purpose of multiple residential development shall have:
- (i) no septic tanks unless they meet the standards set by the Division of Environmental Management and the Division of Environmental Health;
- (ii) no untreated or treated point source discharge;
- (iii) storm water routing and retention areas such as settling basins and grassed swales.
- (H) Construction of finger canal systems shall not be allowed. Canals shall be either straight or meandering with no right angle corners.
- (I) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, vegetative stabilization, or adequate setbacks based on soil characteristics.
- (J) Maintenance excavation in canals, channels and boat basins within primary nursery areas and beds of submerged aquatic vegetation shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991.
- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation; and
- (ii) There exists a previously permitted channel which 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 clear evidence that the channel was continuously used for a specific purpose; and
- (iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation; and

- (iv) The original depth and width of a human-made or natural channel will not be increased to allow a new or expanded use of the channel.
- (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 adequate settlement of suspended solids.
 - (B) Dredge spoil shall be either confined on high ground by adequate retaining structures or if the material is suitable, deposited on beaches for purposes of renourishment, with the exception of (G) of this Subsection (b)(2).
 - (C) Confinement of excavated materials shall be on high ground landward of regularly and irregularly flooded marshland and with adequate soil stabilization measures to prevent entry of sediments into the adjacent water bodies or marsh.
 - (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 mean low water.
 - (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 spoil disposal.
 - (H) Dredge spoil 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 marshland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary for adequate drainage.
 - (B) Spoil 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 insure that entry of sediment into the water or marsh will not occur. Spoil 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 relic disposal sites.
 - (C) Excavation of new ditches through high ground shall take place landward of a temporary earthen plug or other methods to minimize siltation to adjacent water bodies.
 - (D) Drainage ditches shall not have a significant adverse effect on primary nursery areas, productive shellfish beds, beds of submerged aquatic vegetation, or other documented important estuarine habitat. Particular attention shall be placed on the effects of freshwater inflows, sediment, and nutrient introduction. Settling basins, water gates, 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.
 - (C) Drainage ditches shall not create stagnant water pools or significant changes in the velocity of flow.
 - (D) Drainage ditches shall not divert or restrict water flow to important wetlands or marine habitats.
- (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 also comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels.
- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, submerged aquatic vegetation, and wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing adequate flushing by tidal or wind generated water circulation;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in the significant degradation of existing fishery,

- shellfish, or wetland resources and the basin design shall provide adequate flushing by tidal or wind generated water circulation;
- (iii) 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) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which 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 be considered on a case-by-case basis under the standards set out in Part (b)(1)(J) of this Rule.
 - (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
 - (D) 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 shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
 - (E) To protect water quality of 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 is anticipated to result from the location of the marina. In compliance with Section 101(a)(2) of the Clean Water Act 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 apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. 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 which have been harvested or are available for harvest in the area where harvest will be affected by the development.
 - (F) Marinas shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.
 - (G) 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.
 - (H) Marinas shall be designed to minimize adverse effects on navigation and public use of public trust areas while allowing the applicant adequate access to deep waters.
 - (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
 - (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
 - (K) Marinas which require dredging shall provide acceptable areas to accommodate disposal needs for future maintenance dredging. Proof of the ability to truck the spoil material from the marina site to an acceptable disposal area will be acceptable.
 - (L) Marina design shall comply with all applicable requirements for management of stormwater runoff.
 - (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of information on local pump-out services.
 - (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate containment devices to prevent entry of waste materials into adjacent waters.
 - (O) All marinas shall comply with all applicable standards for docks and piers, bulkheading, dredging and spoil disposal.
 - (P) All applications for marinas shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of marina development.

- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the preceding rules are complied with to the maximum extent possible, with due consideration being given to replacement costs, service needs.
- (6) Docks and Piers.
- (A) Docks and piers shall not exceed six feet in width. Wider docks and piers 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) Any portion of a dock or pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.
 - (C) Any portion of a dock or pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.
 - (D) The combined area of all "T"s, finger piers, platforms, and decks must not exceed a combined total area of four square feet per linear foot of shoreline. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, or to support a water dependent use that cannot otherwise occur.
 - (E) "T"s, platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.
 - (F) Docks, piers, "T"s and associated structures built over wetlands must be elevated at least three feet over the wetland substrate measured from the bottom of the decking.
 - (G) Boathouses shall not exceed 400 square feet except to accommodate a demonstrated need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and only covering 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. Size restrictions shall not apply to marinas.
 - (H) The total area enclosed by boat lifts shall not exceed 400 square feet.
 - (I) Piers, docks, decks, platforms and boat houses shall be single story. They may be roofed but shall not be designed to allow second story use.
 - (J) Pier length shall be limited by:
 - (i) not extending beyond the established pier length along the same shoreline for similar use; (This restriction shall 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);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) 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 which borders the water body. The one-fourth length limitation shall 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 within 200 feet of the applicant's property. However, the proposed pier cannot be longer than the pier head line established by the adjacent piers, nor longer than 1/3 the width of the water body.
 - (K) Piers longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot each 100 foot increment of pier length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation which borders the water body.
 - (L) Piers 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 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. Should the adjacent property be sold before construction of the pier 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 7H .1205(q) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. 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.

- (M) Applicants for authorization to construct a dock or pier shall provide notice of the permit application or exemption request 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 and Shore Stabilization Measures

- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate mean high water or normal water level.
- (B) Bulkheads shall be constructed landward of significant marshland or marshgrass fringes.
- (C) Bulkhead fill material shall be obtained from an upland source approved 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 or other structures employed for shoreline stabilization shall be permitted below approximate mean 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, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
 - (ii) the bulkhead alignment extends no further below approximate mean 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 unreasonable hardship resulting from the unusual geographic or geologic features;
 - (iii) the bulkhead alignment will not result in significant adverse impacts to public trust rights or to the property of adjacent riparian owners;
 - (iv) the need for a bulkhead below approximate mean high water or normal water level is documented in the Field Investigation Report or other reports prepared by the Division of Coastal Management; and
 - (v) the property to be bulkheaded is in a nonoceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than vertical seawalls.

(8) Beach Nourishment

- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use.
- (B) Beaches may be created or maintained in areas where they have historically been found due to natural processes. They will not be allowed in areas of high erosion rates where frequent maintenance will be necessary.
- (C) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control.
- (D) Material placed in the water and along the shoreline shall be clean sand free from pollutants and highly erodible finger material. Grain size shall be equal to or larger than that found naturally at the site.
- (E) Material from dredging projects may be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with rules governing spoil disposal;
 - (ii) it is allowed to dry; and
 - (iii) only that material of acceptable grain size 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.
- (F) Beach creation shall not be allowed in any primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
- (G) Material shall not be placed on any coastal wetlands or beds of submerged aquatic vegetation.
- (H) Material shall not be placed on any submerged bottom with significant shellfish resources.
- (I) Beach construction shall not create the potential for filling adjacent or nearby navigation channels, canals, or boat basins.
- (J) Beach construction shall not violate water quality standards.
- (K) Permit renewal of these projects shall require an evaluation of any adverse impacts of the original work.
- (L) Permits issued for this development shall be limited to authorizing beach nourishment only one time during the life of the permit. Permits may be renewed for maintenance work or repeated need for nourishment.

(9) Wooden and Riprap Groins

- (A) Groins shall not extend more than 25 feet waterward of the mean high water or normal water level unless a longer structure is justified by site specific conditions, sound engineering and design principals.
 - (B) Groins shall be set back a minimum of 15 feet from the adjoining property lines. 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 1 foot above mean high water or the normal water level.
 - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
 - (F) "L" and "T" sections shall not be allowed at the end of groins.
 - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant in other than non-harmful quantities 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; or
 - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that may be incorporated into either the local zoning or land use plan.
 - (C) All approved mooring fields shall provide suitable area for access to any mooring(s) and other land based operations which shall include but not be limited to wastewater pumpout, trash disposal and vehicle parking.
 - (D) If the agreement referenced in specific condition in Part (b)(10)(C) of this Rule is terminated or the facility no longer exist, the permit shall become null and void and the permitted project removed from the AEC.
 - (E) 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 is anticipated to 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 apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. 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 which have been harvested or are available for harvest in the area where harvest will be affected by the development.
 - (F) Moorings shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.
 - (G) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
 - (H) Open water moorings shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
 - (I) Moorings and the associated land based operation design shall comply with all applicable requirements for management of stormwater runoff.
 - (J) 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 explaining the availability of information on local pump-out services and waste disposal.
 - (K) Freestanding moorings associated with commercial shipping, public service or temporary construction/salvage operations may be permitted without a public sponsor and shall be evaluated on a case-by-case basis.
 - (L) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including 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 by blocking channels, deep water, etc. which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access.

- (M) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a manner which interferes with the operations of an access through any bridge.
 - (N) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required marking maintained for the life of the mooring(s).
 - (O) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
 - (P) Existing freestanding moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the moorings(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then shall comply with those guidelines of the Division in place at that time. In any event, existing moorings shall comply with these Rules within two years.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in 7H .0208(a) of this Rule, filling canals, basins and ditches shall be allowed if:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level; and
 - (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; and
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, bed of submerged aquatic vegetation, coastal wetlands other than a narrow fringe around the shoreline, recognized public trust right or established public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner; and
 - (E) the filling will further some policy of the Commission such as retreating from erosion or avoiding water quality degradation.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, must be evaluated and a reasonable protection strategy for these natural functions and values provided with the state approval request or permit application.
 - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities shall be avoided.
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Division of Archives and History; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g).
 - (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities, 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.
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources.
 - (vi) Mining activities shall not affect potable groundwater supplies; wildlife, freshwater, estuarine, or marine fisheries.
 - (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include any measures reasonably necessary to insure compliance with the provisions of the Act and the guidelines for development set out in this Subchapter.
 - (i) Monitoring shall be required to the extent necessary to ensure compliance with all applicable development standards. Implementation of monitoring is the responsibility of the applicant.
 - (ii) A determination of the necessity and feasibility of restoration will be made as part of the permit, or consistency review, process. Restoration will be deemed necessary where it will facilitate recovery of the pre-development ecosystem. Restoration will be considered feasible unless, after consideration of all practicable restoration alternatives, it is determined 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 be required to submit a restoration plan to DCM for approval prior to the initiation of any mining activities.

- (C) Dredging activities for the purposes of mining natural resources must be consistent with the development standards set out in this Rule.
- (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 7M .0700.
- (E) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992; RRC Objection due to ambiguity Eff. March 21, 1996; Amended Eff. August 1, 1998; May 1, 1996.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation.

Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.

- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" means a project that is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
 - (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
 - (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.
- (e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.
- (f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.
 - (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - (A) have no stormwater collection system;
 - (B) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
 - (C) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
 - (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:
 - (A) the development has a CAMA permit application in process, or
 - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.
 - (3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
 - (4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.
- (g) Urban Waterfronts.
 - (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:

- (A) The area lies wholly within the corporate limits of a municipality; and
 - (B) the area has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.
- (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
- (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) Use Standards:
- (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within Urban Waterfronts that meets the following standards:
 - (i) The development must be consistent with the locally adopted land use plan;
 - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
 - (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;
 - (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within Urban Waterfronts as set out below.
 - (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
 - (ii) For the purposes of this Rule, existing enclosed structures may be replaced and or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure and is consistent with local requirements or limitations.
 - (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
 - (I) The proposed development shall provide for enhanced public access to the shoreline;
 - (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
 - (III) Structures shall be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
 - (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - (V) Structures shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
 - (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' 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. Should the adjacent property be sold before construction of the structure 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;

- (VIII) Structures shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts include the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142); Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494); Amended Eff. March 1, 2010; April 1, 2008; August 1, 2002.