

1 **SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

2 |
3 **15A NCAC 07H .0208 USE STANDARDS**

4 (a) General Use Standards

5 (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust
6 areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are
7 examples of uses that are not water dependent. Uses that are water dependent ~~may include: utility easements;~~
8 ~~docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins;~~
9 ~~navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches.~~ crossings,
10 docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins,
11 navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.

12 (2) Before being granted a ~~permit by permit,~~ the CRC or local permitting ~~authority;~~ authority ~~there shall be a~~
13 ~~finding find~~ that the applicant has complied with the following standards:

14 (A) The location, design, and need for development, as well as the construction activities involved
15 shall be consistent with the ~~stated management objective;~~ objective of the Estuarine and Ocean
16 System AEC and shall be sited and designed to avoid significant adverse impacts upon the
17 productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic
18 vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas.

19 ~~(B) — Before receiving approval for location of a use or development within these AECs, the~~
20 ~~permit letting authority shall find that no suitable alternative site or location outside of the AEC~~
21 ~~exists for the use or development and, further, that the applicant has selected a combination of~~
22 ~~sites and design that will have a minimum adverse impact upon the productivity and biologic~~
23 ~~integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning~~
24 ~~and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important~~
25 ~~natural erosion barriers (cypress fringes, marshes, clay soils).~~

26 ~~(C)(B)~~ Development shall ~~not violate~~ comply with state and federal water and air quality standards.

27 ~~(D)(C)~~ Development shall not cause ~~major or irreversible damage to valuable~~ documented archaeological
28 or historic ~~resources.~~ resources as identified by the N.C. Department of Cultural Resources.

29 ~~(E)(D)~~ Development shall not ~~measurably~~ increase siltation.

30 ~~(F)(E)~~ Development shall not create stagnant water bodies.

31 ~~(G)(F)~~ Development shall be timed to ~~have minimum adverse significant affect~~ avoid significant adverse
32 impacts on life cycles of estuarine and ocean resources.

33 ~~(H)(G)~~ Development shall not ~~impede jeopardize the capability~~ use of the waters to be used
34 for navigation or for other public trust rights ~~create undue interference with access to, or use of, in~~
35 public trust areas or estuarine waters.

36 (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule,
37 the CRC may approve the development if the applicant can demonstrate that the activity associated with the
38 proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management
39 Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable
40 ~~and prudent~~ alternate site available for the project, and that all reasonable means and measures to mitigate adverse
41 impacts of the project have been incorporated into the project design and ~~will~~ shall be implemented at the applicant's
42 expense. ~~These measures~~ Measures taken to mitigate or minimize adverse impacts ~~may shall~~ include actions that
43 will:

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

45 (B) restore the affected environment; or

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

47 (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of
48 finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where
49 populations are uniformly early juvenile stages. They are ~~officially~~ designated and described by the N.C. Marine
50 Fisheries Commission (MFC) ~~in 15A NCAC 3B .1405~~ and by the N.C. Wildlife Resources Commission (WRC), ~~in~~
51 ~~15A NCAC 10C .0110.~~

52 (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C.
53 Environmental Management Commission (EMC), pursuant to Title 15A, Subchapter 2B .0216 of the N.C.
54 Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state
55 or national recreational or ecological significance. In those estuarine waters and public trust areas classified as
56 ORW by the Environmental Management Commission (EMC), (EMC) no permit required by the Coastal Area
57 Management Act shall be approved for any project which would be inconsistent with applicable use standards
58 adopted by the CRC, EMC, or Marine Fisheries Commission (MFC) for estuarine waters, public trust areas, or
59 coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the
60 activity would, based on site specific information, ~~materially~~ degrade the water quality or outstanding resource
61 values. ~~values unless such degradation is temporary.~~

1 (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated
2 with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal
3 zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine
4 Fisheries Commission, ~~presence of above ground leaves or the below ground rhizomes and propagules.~~ In defining
5 SAVs, the CRC recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the
6 SAV definition and its implementing rules to apply to or conflict with the non-development control activities
7 authorized by that Act. Any rules relating to SAVs shall not apply to non-development control activities authorized
8 by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.).

9 (b) Specific Use Standards

10 (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery ~~areas~~
11 areas, highly productive shellfish beds, beds as identified by the MFC, beds of submerged aquatic vegetation,
12 vegetation as defined by the MFC, or significant areas of regularly or irregularly flooded coastal wetlands, wetlands
13 except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply
14 with the following standards:

- 15
- 16 (A) Navigation channels and canals may be allowed through ~~narrow~~ fringes of regularly and ir-
17 regularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts
18 on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative
19 that would avoid the wetland losses.
- 20 (B) All ~~spoilt dredged~~ material ~~from new construction~~ shall be confined landward of regularly and
21 irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent
22 water bodies or coastal wetlands, marsh.
- 23 (C) ~~Spoilt~~Dredged material from maintenance of channels and canals through irregularly flooded
24 wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method
25 having no significant, ~~long term~~ long-term wetland impacts. Under no circumstances shall ~~spoilt~~
26 dredged material be placed on regularly flooded wetlands. New dredged material disposal areas
27 shall not be located in the buffer area as outlined in 15A NCAC .07H .0209(d)(10).
- 28 (D) Widths of ~~the excavated~~ canals and channels shall be the minimum required to meet the
29 applicant's needs ~~and provide adequate~~ but not impair water circulation.
- 30 (E) Boat basin design shall maximize water exchange by having the widest possible opening and the
31 shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end
32 inland.
- 33 (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting ~~channels.~~
34 waters.
- 35 (G) ~~Canals for the purpose of multiple residential development shall have:~~
- 36 (i) ~~no septic tanks unless they meet the standards set by the Division of Environmental~~
37 ~~Management and the Division of Environmental Health;~~
- 38 (ii) ~~no untreated or treated point source discharge;~~
- 39 (iii) ~~storm water routing and retention areas such as settling basins and grassed swales.~~
- 40 (H)(G) Construction of finger canal systems shall not be allowed. Canals shall be either straight or
41 meandering with no right angle corners.
- 42 (H)(H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may
43 include ~~bulkheading, shoreline stabilization,~~ vegetative stabilization, or ~~adequate~~ setbacks based
44 on soil characteristics.
- 45 (I)(I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and
46 ~~beds areas~~ of submerged aquatic vegetation as defined by the MFC shall be avoided. However,
47 when essential to maintain a traditional and established use, maintenance excavation may be
48 approved if the applicant meets all of the following criteria. ~~criteria as shown by clear and~~
49 ~~convincing evidence accompanying the permit application.~~ This ~~Rule-Part~~ does not affect
50 restrictions placed on permits issued after March 1, 1991.
- 51 (i) The applicant demonstrates and documents that a water-dependent need exists for the
52 excavation; ~~and~~
- 53 (ii) There exists a previously permitted channel ~~which that~~ was constructed or maintained
54 under permits issued by the State or Federal government. If a natural channel was in
55 use, or if a human-made channel was constructed before permitting was necessary, there
56 shall be ~~clear~~ evidence that the channel was continuously used for a specific purpose;
57 ~~and~~
- 58 (iii) Excavated material can be removed and placed in ~~a an approved~~ disposal area in
59 accordance with Part (b)(1)(B) of this Rule without ~~significantly~~ impacting adjacent
60 nursery areas and ~~beds of submerged aquatic vegetation;~~ vegetation as defined by the
61 MFC; and

(iv) The original depth and width of a human-made or natural channel ~~will~~ shall 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~~ Dredged material shall be either confined on high ground by ~~adequate~~ retaining structures or deposited on beaches for purposes of renourishment, if the material is ~~suitable~~, suitable in accordance with the Rules in this Subchapter deposited on beaches for purposes of renourishment, with the exception of ~~except as provided in part (G) of this Subparagraph. Subsection (b)(2).~~
- (C) Confinement of excavated materials shall be ~~on high ground~~ landward of ~~regularly and irregularly flooded marshland~~ all coastal wetlands and ~~with adequate~~ shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands, ~~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, normal low water or normal water level.~~
- (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
- (F) A water control structure shall be installed at the intake end of the effluent pipe.
- (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and ~~spoil~~ dredged material disposal.
- (H) ~~Dredge spoil~~ Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

- (A) Drainage ditches located through any ~~marshland~~ coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary, ~~necessary for adequate drainage.~~
- (B) ~~Spoil~~ Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. ~~Spoil~~ Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on ~~nonwetlands~~ non-wetlands wherever feasible. Non-wetland areas include relic disposal sites.
- (C) Excavation of new ditches through high ground shall take place landward of ~~an a temporary~~ earthen plug or other methods to minimize siltation to adjacent water bodies.
- (D) Drainage ditches shall not have a significant adverse ~~effect~~ impact on primary nursery areas, productive shellfish beds, ~~beds of submerged aquatic vegetation~~ vegetation, as defined by the MFC, or other ~~documented important~~ estuarine habitat. ~~Particular attention shall be placed on~~ Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and ~~the introduction of nutrients~~ nutrient introduction, to receiveing waters. Settling basins, water ~~gates, gates and~~ retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
- (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
- (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. Marinas shall also comply with the following standards:

- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb ~~valuable shallow water, shellfish resources,~~ submerged aquatic ~~vegetation,~~ vegetation as defined by the MFC, and ~~or~~ 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; circulation or basin design characteristics;
 - (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~~ adverse impacts to 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~~ comply with the standards set out in Part (b)(1)~~(F)(I)~~ 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 in~~ shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code 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 Coastal Mangement shall consult with 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 that~~ 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~~ leaseholders or owners in areas of submerged lands ~~which that~~ 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 so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized 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;~~ boundaries as designated by the US Army Corps of Engineers. 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 according to Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance ~~dredging.~~ Proof of the ability to truck dredging, including the ability to remove the spoil dredged material from the marina site. ~~site to an acceptable disposal area will be acceptable.~~

- 1 (L) Marina design shall comply with all applicable requirements for management of stormwater
2 ~~runoff. runoff as required by the EMC. Stormwater management systems shall not be located~~
3 within the 30-foot buffer area outlined in 15A NCAC .07H .0209(d).
- 4 (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining
5 the availability of ~~information on~~ local pump-out services.
- 6 (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be
7 done over dry land with adequate collection and containment devices ~~to~~ that prevent entry of
8 waste materials into adjacent waters.
- 9 (O) All marinas shall comply with all applicable standards for docks and piers, ~~bulkheading,~~ shoreline
10 stabilization, dredging and ~~soil dredged material disposal.~~ disposal of this Rule.
- 11 (P) All applications for marinas shall be reviewed by the Division of Coastal Management to
12 determine their potential impact to coastal resources and compliance with applicable ~~standards.~~
13 standards of this Rule. Such review shall also consider the cumulative impacts of marina
14 development.
- 15 (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided
16 that the ~~preceding rules~~ standards for marina development within this section are complied with to
17 the maximum extent possible, with ~~due~~ consideration being given to replacement ~~costs,~~ costs and
18 service needs.
- 19 (6) ~~Docks and Piers.~~ Piers and Docking Facilities.
- 20 (A) ~~Docks and piers~~ Piers shall not exceed six feet in width. ~~Wider docks and piers~~ Piers greater than
21 six feet in width shall be permitted only if the greater width is necessary for safe use, to improve
22 public access, ~~access;~~ or to support a water dependent use that cannot otherwise occur.
- 23 (B) ~~Any portion of a dock or pier (either fixed or floating) extending from the main structure and six~~
24 ~~feet or less in width shall be considered either a "T" or a finger pier.~~
- 25 (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier)
26 allowed shall be 8 square feet per linear foot of shoreline with a maximum of 2,000 square feet.
27 In calculating the shaded impact, uncovered open water slips shall not be counted in the total.
28 Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the
29 greater dimensions are necessary for safe use, to improve public access, ~~access;~~ or to support a
30 water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas.
- 31 (C) ~~Any portion of a dock or pier (either fixed or floating) greater than six feet wide shall be~~
32 ~~considered a platform or deck.~~
- 33 (C) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal
34 wetland substrate as measured from the bottom of the decking.
- 35 (D) ~~The combined area of all "T"s, finger piers, platforms, and decks must not exceed a combined~~
36 ~~total area of four square feet per linear foot of shoreline. Projects requiring dimensions greater~~
37 ~~than those stated in this Rule shall be permitted only if the greater dimensions are necessary for~~
38 ~~safe use, or to support a water dependent use that cannot otherwise occur.~~
- 39 (E) ~~"T"s, platforms and decks shall have no more than six feet of any dimension extending over~~
40 ~~coastal wetlands.~~
- 41 (F)(D) ~~Docks, piers, "T"s and associated structures~~ Docking facilities built over coastal wetlands must
42 shall have no more than six feet of any dimension extending over coastal wetlands and shall be
43 elevated at least three feet ~~over the~~ above any coastal wetland substrate measured from the bottom
44 of the decking.
- 45 (G)(E) ~~Boathouses~~ A boathouse shall not exceed 400 square feet except to accommodate a demonstrated
46 need for a larger boathouse and shall have sides extending no farther than one-half the height of
47 the walls and only covering the top half of the walls. Measurements of square footage shall be
48 taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than
49 75 linear feet of shoreline. Size restrictions shall not apply to marinas.
- 50 (H)(F) The total area enclosed by ~~boat lifts~~ an individual boat lift shall not exceed 400 square ~~feet.~~ feet
51 except to accommodate a demonstrated need for a larger boat lift.
- 52 (I)(G) ~~Piers, docks, decks, platforms and boat houses~~ Piers and docking facilities shall be single story.
53 They may be roofed ~~by~~ but shall not be designed to allow second story use.
- 54 (J)(H) Pier and docking facility length shall be limited by:
55 (i) not extending beyond the established pier or docking facility length along the same
56 shoreline for similar use; (This restriction shall not apply to piers 100 feet or less in
57 length unless necessary to avoid unreasonable interference with navigation or other uses
58 of the waters by the public);
59 (ii) not extending into the channel portion of the water body; and
60 (iii) not extending more than one-fourth the width of a natural water body, or human-made
61 canal or basin. Measurements to determine widths of the water body, canals or basins
62 shall be made from the waterward edge of any coastal wetland vegetation ~~which~~ that

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 or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility ~~cannot~~ shall not be longer than the pier head line established by the adjacent ~~piers,~~ piers or docking facilities, nor longer than ~~1/3~~ one-third the width of the water body.

~~(K)~~(I) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 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 that~~ borders the water body.

~~(L)~~(J) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 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)~~(K) Applicants for authorization to construct a ~~dock or pier~~ or docking facility 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 the~~ location of normal high water or normal water level.

(B) Bulkheads shall be constructed landward of ~~significant marshland or marshgrass fringes.~~ coastal wetlands in order to avoid significant adverse impacts to the resources.

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

(D) Bulkheads ~~or other structures employed for shoreline stabilization~~ shall be permitted below ~~approximate mean~~ normal high water or normal water level only when the following standards are met:

(i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;

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

(iii) the bulkhead alignment will not ~~result in significant adverse impacts~~ adversely impact to public trust rights or ~~to~~ the property of adjacent riparian owners;

(iv) the need for a bulkhead below ~~approximate mean~~ normal 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 ~~non-oceanfront~~ non-oceanfront area.

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

(8) Beach Nourishment

- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use: use consistent with the following:
- ~~(B)~~ (i) 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.~~
- (ii) Material placed in the water and along the shoreline shall be clean sand free from pollutants. Grain size shall be equal to that found naturally at the site.
- (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
- (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by the MFC.
- (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during permit review.
- (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
- ~~(C)~~(B) 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)~~(C) Material from dredging projects may be used for beach nourishment if:
- (i) it is first handled in a manner consistent with ~~rules governing spoil~~ dredged material disposal; disposal as set forth in this Rule;
- (ii) it is allowed to ~~dry;~~ dry prior to being placed on the beach; and
- (iii) only that material of acceptable grain size as set forth in part (b)(8)(A)(ii) of this rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- ~~(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)~~(D) Beach construction shall ~~not violate~~ comply with state and federal water quality standards.
- ~~(K)~~(E) ~~Permit~~ The renewal of these permits for beach nourishment projects shall require an evaluation of by the Division of Coastal Management of any adverse impacts of the original work.
- ~~(L)~~(F) ~~Permits issued for this development~~ beach nourishment 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 normal~~ high water or normal water level unless a longer structure is justified by ~~site specific conditions, site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process.~~ sound engineering and design principals.
- (B) Groins shall be set back a minimum of 15 feet from the adjoining ~~property~~ riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
- (C) Groins shall pose no threat to navigation.
- (D) The height of groins shall not exceed \pm one foot above ~~mean normal~~ 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".

- 1 (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other
2 water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as
3 the piling is not associated with an existing or proposed pier, dock, or boathouse).
- 4 (B) Freestanding moorings shall be permitted only:
5 (i) to riparian property owners within their riparian corridors; or
6 (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan
7 that ~~may be incorporated into~~ is included in either the local zoning or land use plan.
- 8 (C) All ~~approved~~ mooring fields shall provide suitable ~~an~~ area for access to any mooring(s) and other
9 land based operations ~~which~~ that shall include ~~but not be limited to~~ wastewater pumpout, trash
10 disposal and vehicle parking.
- 11 ~~(D) If the agreement referenced in specific condition in Part (b)(10)(C) of this Rule is terminated or~~
12 ~~the facility no longer exist, the permit shall become null and void and the permitted project~~
13 ~~removed from the AEC.~~
- 14 ~~(E)(D)~~ (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas
15 where shellfish harvesting for human consumption is a significant existing use or adjacent to such
16 areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In
17 compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251
18 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish
19 harvesting is a significant existing use if it can be established that shellfish have been regularly
20 harvested for human consumption since November 28, 1975 or that shellfish ~~apparently~~ are
21 propagating and surviving in a biologically suitable habitat and are available and suitable for
22 harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be
23 consulted regarding the significance of shellfish harvest as an existing use and the magnitude of
24 the quantities of shellfish ~~which~~ that have been harvested or are available for harvest in the area
25 where harvest will be affected by the development.
- 26 ~~(F)(E)~~ (E) Moorings shall not be located without written consent from the ~~controlling parties~~ leaseholders or
27 owners ~~in areas~~ of submerged lands ~~which~~ that have been leased from the state or deeded by the
28 state.
- 29 ~~(G)(F)~~ (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation
30 throughout all federally maintained channels ~~channels and their immediate boundaries~~. This
31 includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device,
32 either physical or regulatory, ~~that~~ which may cause a federally maintained channel to be
33 restricted.
- 34 ~~(H)(G)~~ (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation sufficient
35 and degrade to maintain water quality in accordance with EMC standards ~~quality~~.
- 36 ~~(I)(H)~~ (H) Moorings and the associated land based operation design shall comply with all applicable
37 requirements for management of stormwater runoff in accordance with EMC standards ~~runoff~~.
- 38 ~~(J)(I)~~ (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any
39 waste from boat toilets or any other discharge and explaining the availability of ~~information on~~
40 local pump-out services and waste disposal.
- 41 ~~(K)(J)~~ (J) Freestanding moorings associated with commercial shipping, public service or temporary
42 construction/salvage operations may be permitted without a public sponsor ~~sponsor and shall be~~
43 ~~evaluated on a case by case basis~~.
- 44 ~~(L)(K)~~ (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing
45 including the length of the vessel to be moored. Moorings and the attached vessel shall not
46 interfere with the access of any riparian owner nor shall it block riparian access by blocking to
47 channels, deep water, etc. which allows riparian access. Freestanding moorings shall not interfere
48 with the ability of any riparian owner to place a pier for access.
- 49 ~~(M)(L)~~ (L) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a
50 manner ~~which~~ that interferes with the operations of an access through any bridge.
- 51 ~~(N)(M)~~ (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and ~~N.C.~~
52 ~~Wildlife Resource Commission~~ the WRC requirements and the required marking maintained for
53 the life of the mooring(s).
- 54 ~~(O)(N)~~ (N) The type of material used to create a mooring must be free of pollutants and of a design and type
55 of material so as to not present a hazard to navigation or public safety.
- 56 ~~(P)~~ ~~Existing freestanding moorings (i.e. buoys/pilings) may be maintained in place for two years.~~
57 ~~However, if the moorings(s) deteriorate or are damaged such that replacement is necessary during~~
58 ~~the two year period, the mooring(s) then shall comply with those guidelines of the Division in~~
59 ~~place at that time. In any event, existing moorings shall comply with these Rules within two~~
60 ~~years.~~

- 1 (11) Filling of Canals, Basins and Ditches - ~~Notwithstanding~~ Notwithstanding the general use standards for
2 estuarine systems as set out in ~~7H-0208~~ Paragraph (a) of this Rule, filling canals, basins and ditches shall be
3 allowed ~~if~~ if all of the following conditions are met:
- 4 (A) the area to be filled was not created by excavating lands which were below the normal high water
5 or normal water level; ~~and~~
 - 6 (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the
7 elevation of said wetlands so that wetland function will be restored; ~~and~~
 - 8 (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, ~~bed of~~
9 submerged aquatic ~~vegetation,~~ vegetation as defined by the MFC, coastal wetlands, ~~wetlands~~
10 ~~other than a narrow fringe around the shoreline,~~ recognized public trust right or established public
11 trust usage; and
 - 12 (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
13 ~~owner; and~~
 - 14 ~~(E) the filling will further some policy of the Commission such as retreating from erosion or avoiding~~
15 ~~water quality degradation.~~
- 16 (12) "Submerged Lands Mining"
- 17 (A) Development Standards. Mining of submerged lands shall meet all the following standards.
18 ~~standards:~~
 - 19 (i) The biological productivity and biological significance of mine sites, or borrow sites
20 used for sediment extraction, ~~must~~ shall be evaluated for significant adverse impacts and
21 a reasonable protection strategy for these natural functions and values provided with the
22 state approval request or permit ~~application.~~ application;
 - 23 (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant
24 benthic communities identified by the Division of Marine Fisheries or the WRC shall be
25 ~~avoided.~~ avoided;
 - 26 (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this
27 Subchapter; shipwrecks identified by the ~~Department of Cultural Resources; Division of~~
28 ~~Archives and History;~~ and unique geological features that require protection from
29 uncontrolled or incompatible development as identified by the Division of Land
30 Resources pursuant to ~~G.S. 113A-113(b)(4)(e).~~ G.S. 113A-113(b)(4)(g);
 - 31 (iv) Mining activities shall not be conducted on or within 500 meters of significant biological
32 communities identified by the Division of Marine Fisheries or the WRC; ~~communities,~~
33 such as high relief hard bottom areas. High relief is defined for this standard as relief
34 greater than or equal to one-half meter per five meters of horizontal distance; ~~distance.~~
 - 35 (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or
36 ocean ~~resources.~~ resources; and
 - 37 (vi) Mining activities shall not affect potable groundwater supplies, ~~supplies;~~ wildlife,
38 freshwater, estuarine, or marine fisheries.
 - 39 (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant
40 amending the mining proposal to include ~~any~~ measures reasonably necessary to insure compliance
41 with the provisions of the Mining Act and the guidelines for development set out in this
42 Subchapter. Permit conditions shall also include:
 - 43 (i) Monitoring shall be required ~~of the applicant to the extent necessary~~ to ensure
44 compliance with all applicable development ~~standards; and~~ standards. ~~Implementation~~
45 ~~of monitoring is the responsibility of the applicant.~~
 - 46 (ii) A determination of the necessity and feasibility of restoration ~~will~~ shall be made by the
47 Division of Coastal Management as part of the ~~permit,~~ permit or consistency review,
48 review process. Restoration ~~will~~ shall be ~~deemed~~ necessary where it will facilitate
49 recovery of the pre-development ecosystem. Restoration ~~will~~ shall be considered
50 feasible unless, after consideration of all practicable restoration alternatives, ~~it is~~
51 ~~determined~~ the Division of Coastal Management determines that the adverse effects of
52 restoration outweigh the benefits of the restoration on estuarine or ocean resources. If
53 restoration is determined to be necessary and feasible, then the applicant shall ~~be~~
54 ~~required to~~ submit a restoration plan to ~~DCM~~ the Division of Coastal Management for
55 approval prior to the initiation of any mining activities.
 - 56 (C) Dredging activities for the purposes of mining natural resources ~~must~~ shall be consistent with the
57 development standards set out in this Rule.
 - 58 (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out
59 in this Rule, the applicant may request mitigation approval under 15A NCAC 7M .0700.
 - 60 (E) Public Benefits Exception. Projects that conflict with these standards, but provide a public
61 benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

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

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