

SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0100 - PURPOSE AND AUTHORITY

15A NCAC 07M .0101 AUTHORITY

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Repealed Eff. November 1, 1984.

15A NCAC 07M .0102 PURPOSE

The purpose of these rules is to establish generally applicable objectives and policies to be followed in the public and private use of land and water areas within the coastal area of North Carolina.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

SECTION .0200 - SHORELINE EROSION POLICIES

15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that development along the ocean and estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish these public purposes, the planning of future land uses, reasonable rules and public expenditures should be created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and public resources resulting from recognized coastal hazards.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1979;
RRC Objection due to lack of necessity Eff. October 17, 1991;
Amended Eff. March 1, 1992.

15A NCAC 07M .0202 POLICY STATEMENTS

- (a) Pursuant to Section 5, Article 14 of the North Carolina Constitution, proposals for shoreline erosion response projects shall avoid losses to North Carolina's natural heritage. All means should be taken to identify and develop response measures that will not adversely affect estuarine and marine productivity. The public right to use and enjoy the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach rescue services. Private property rights to oceanfront properties including the right to protect that property in ways that are consistent with public rights should be protected.
- (b) Erosion response measures designed to minimize the loss of private and public resources to erosion should be economically, socially, and environmentally justified. Preferred response measures for shoreline erosion shall include but not be limited to AEC rules, land use planning and land classification, establishment of building setback lines, building relocation, subdivision regulations and management of vegetation.
- (c) The replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and private property. Experience in North Carolina and other states has shown that beach restoration projects can present a feasible

alternative to the loss or massive relocation of oceanfront development. In light of this experience, beach restoration and sand renourishment and disposal projects may be allowed when:

- (1) Erosion threatens to degrade public beaches and to damage public and private properties;
- (2) Beach restoration, renourishment or sand disposal projects are determined to be socially and economically feasible and cause no significant adverse environmental impacts;
- (3) The project is determined to be consistent with state policies for shoreline erosion response and state use standards for Ocean hazard and Public Trust Waters Areas of Environmental Concern and the relevant rules and guidelines of state and federal review agencies.

When the conditions set forth in this Paragraph can be met, the Coastal Resources Commission supports, within overall budgetary constraints, state financial participation in Beach Erosion Control and Hurricane Wave Protection projects that are cost-shared with the federal government and affected local governments pursuant to the federal Water Resources Development Act of 1986 and the North Carolina Water Resources Development Program (G.S. 143-215.70-73).

(d) The following are required with state involvement (funding or sponsorship) in beach restoration and sand renourishment projects:

- (1) The entire restored portion of the beach shall be in permanent public ownership;
- (2) It shall be a local government responsibility to provide adequate parking, public access, and services for public recreational use of the restored beach.

(e) Temporary measures to counteract erosion, such as the use of sandbags and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.

(f) Efforts to permanently stabilize the location of the ocean shoreline with seawalls, groins, shoreline hardening, sand trapping or similar protection devices shall not be allowed except when the project meets one of the specific exceptions set out in 15A NCAC 7H .0308.

(g) The State of North Carolina will consider innovative institutional programs and scientific research that will provide for effective management of coastal shorelines. The development of innovative measures that will lessen or slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties is encouraged.

(h) The planning, development, and implementation of erosion control projects will be coordinated with appropriate planning agencies, affected governments and the interested public. Maximum efforts will be made by the state to accommodate the interest of each interested party consistent with the project's objectives. Local, state, and federal government activity in the coastal area should reflect an awareness of the natural dynamics of the ocean front. Government policies should not only address existing erosion problems but should aim toward minimizing future erosion problems. Actions required to deal with erosion problems are very expensive. In addition to the direct costs of erosion abatement measures, many other costs, such as maintenance of projects, disaster relief, and infrastructure repair will be borne by the public sector. Responses to the erosion should be designed to limit these public costs.

(i) The state will promote education of the public on the dynamic nature of the coastal zone and on effective measure to cope with our ever changing shorelines.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1979;
Amended Eff. March 1, 1985;
RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;
Amended Eff. May 4, 1995.*

SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY

(a) The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance and ensure optimum access to the public beaches and waters of the 20 county coastal region. Access shall be consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.

(b) The State has created an access program for the purpose of acquiring, improving and maintaining waterfront recreational property at frequent intervals throughout the coastal region for public access to these important public trust resources.

(c) In addition, some properties, due to their location, are subject to severe erosion so that development ~~here~~ is not possible or feasible. In these cases, a valid public purpose may be served by the donation or acquisition of these properties for public access.

(d) The primary purpose of the public access program is to provide funds to acquire or develop land for public access, including parking as authorized by G.S. 113A-134.3(c). Boating and fishing facilities are eligible for funding under the Public Beach and Coastal Waterfront Access Program provided that pedestrian access is also incorporated in the design of the facility.

*History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3;
Eff. March 1, 1979;
Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985; July 1, 1982.*

15A NCAC 07M .0302 DEFINITIONS

As used in this Section: the Public Beach and Coastal Waterfront Access program is to provide public access to the public trust beaches and waters in the 20 coastal counties.

- (1) "Ocean Beach Access" includes the acquisition and improvement of properties adjacent or proximate to the Atlantic Ocean for parking and public passage to the oceanfront.
- (2) "Coastal Waterfront Access" includes the acquisition and improvement of properties located in the 20 county area under the Coastal Area Management Act (CAMA) jurisdiction that are adjacent or proximate to coastal waterways to which the public has rights of access or public trust rights.
- (3) "Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(3).
- (4) "Public Trust Waters" is defined in 15A NCAC 7H .0207(a).
- (5) "Beach" is defined as an area adjacent to the ocean extending landward from the mean low water line to a point where either the growth of vegetation occurs or a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward, or riparian owners have specifically and legally restricted access above the mean high water line. This definition is intended to describe those shorefront areas customarily freely used by the public.
- (6) "Local Access Sites" include those public access points which offer minimal or no facilities—Generally, these accessways provide only a dune crossover or pier, if needed, litter receptacles and public access signs. Vehicle parking is generally not available at these access sites. However, bicycle racks may be provided.
- (7) "Neighborhood Access Sites" includes those public access areas offering parking, usually for 5 to 25 vehicles, a dune crossover or pier, litter receptacles and public access signs. Restroom facilities may be installed.
- (8) "Regional Access Sites" are of such size and offer such facilities that they serve the public from throughout an island or community including day visitors. These sites normally provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles and public access signs.
- (9) "Multi-regional Access Sites" are generally larger than regional accessways but smaller than state parks. Such facilities may be undertaken and constructed with the involvement and support of state and local government agencies. Multi-regional accessways provide parking for a minimum of 80 vehicles, restrooms with indoor showers and changing rooms, and concession stands.

- (10) "Urban Waterfront Access Projects" improve public access to deteriorating or under utilized urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront.
- (11) "Improvements" are facilities that are added to promote public access at a designated access site. The most common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks and foot showers.
- (12) "Maintenance" is the upkeep and repair of public access sites and their facilities in such a manner that public health and safety is ensured. Where the local government uses or has used access funds administered by the North Carolina Coastal Management Program (NCCMP), the local government shall provide operation and maintenance of the facility for the useful life of that facility. The useful life of a facility shall be defined in the individual grant contract.
- (13) "Handicapped Accessible" is defined as meeting the standards of the State Building Code for handicapped accessibility.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. March 1, 1979;
Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985; July 1, 1982.*

15A NCAC 07M .0303 STANDARDS FOR PUBLIC ACCESS

- (a) Public beach nourishment projects undertaken with public funds shall include provisions for public access and parking within the boundaries of the project to achieve maximum public use and benefit of these areas.
- (b) Public access projects funded under this through the Public Beach and Coastal Waterfront Access Program shall be consistent with public access policies contained in the local government's land use plan as required in 15A NCAC 07B .0702(d)(3)(A) and its local waterfront access plan, or a local recreation plan that addresses public access.
- (c) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113-134.3 may charge user fees as long as those fees are used exclusively for operation and maintenance, or provision of new public access. Local governments shall include biannual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites. Biannual accounting reports shall be submitted to the Director of the Division of Coastal Management by June 30 of the year in which it is due. Accounting reports may be included in Biannual LUP Implementation Status Reports under 15A NCAC 07L .0511.
- (d) Land acquired with Public Beach and Coastal Waterfront Access grant funds shall be dedicated in perpetuity for public access and benefit of the general public. The dedication shall be recorded in the property records by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved with access grant funds is sold or otherwise disposed of, the local government shall reimburse the State at a percentage equal to the proportion of access grant funds provided for the original purchase at current market value at the time of sale.

*History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-227(a); 160A-314(a); 16 U.S.C. Sec. 1453;
Eff. March 1, 1979;
Amended Eff. March 1, 1988; March 1, 1985; July 1, 1982;
RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;
Amended Eff. February 1, 2009; August 1, 2007; January 1, 1998; March 1, 1992.*

15A NCAC 07M .0304 LOCAL PARTICIPATION REQUIREMENTS: BEACH ACCESS PROGRAM **15A NCAC 07M .0305 MANDATORY PUBLIC NOTICE**

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. July 1, 1982;
Amended Eff. May 1, 1990; March 1, 1988; March 1, 1985
Repealed Eff. January 1, 1998.*

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

- (a) Coastal Waterfront access in the 20-county coastal area is a concern of local, state, regional and national importance. Local governments have lead responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans pursuant to 15A NCAC 07B .0702(d)(3(A) and local waterfront access plans. The Division of Coastal Management may take the lead in acquiring and improving access sites as such opportunities arise.
- (b) A local policy in a land use plan sets the community objectives for access. A local government may, through its land use plan:
 - (1) identify access needs and develop local policy to pursue access funding;
 - (2) develop a local access plan; and
 - (3) solicit access sites through corporate assistance.
- (c) An access plan shall identify needs and opportunities, determine access and facility requirements, establish standards, and develop specific project design plans or guidelines by appropriate site. An access plan shall consider both financial resource availability (such as grants, impact fees or hotel/motel tax revenues) and construction timing. It shall establish priorities and devise a system for annual evaluation of the plan.
- (d) Local governments may also include provisions in local ordinances that require access for waterfront developments or require payment in lieu of access for non-water dependent subdivisions.
- (e) Dedicated street ends may be acceptable for accessways.
- (f) The Division of Coastal Management has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. Subject to the availability of funds, the Division of Coastal Management shall annually solicit pre-application proposals from local governments and shall select competitive projects for full application submittal. Projects from these final applications shall be selected for funding based on criteria in Rule .0307 of this Section.
- (g) The Division of Coastal Management may use available funds on a non-competitive basis to plan for and provide public access through acquisition of improvements. Prior to expending funds, the Division of Coastal Management shall hold a public meeting or hearing to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission for a minimum of sixty days prior to the expenditure of non-competitive money by the Division of Coastal Management.
- (h) The Division of Coastal Management shall ensure all projects funded through the Public Beach and Coastal Waterfront Access Program are making progress throughout project implementation and ensure that completed projects are operated and maintained for access purposes.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. February 1, 2009; August 1, 2007.*

15A NCAC 07M .0307 ELIGIBILITY, SELECTION CRITERIA AND MATCHING REQUIREMENTS

- (a) Any local government in the 20 coastal county region having ocean beaches or estuarine or public trust waters within its jurisdiction may apply for access funds for the development of beach or coastal waterfront access facilities with associated improvements. Boat ramps, canoe/kayak launch areas may also be developed provided that the access facilities incorporate pedestrian access to coastal waters.
- (b) Eligible projects include:
 - (1) Land acquisition, including acquisition of unbuildable lots;
 - (2) Local Access Sites;
 - (3) Neighborhood Access Sites or improvements;
 - (4) Regional Access Sites or improvements;
 - (5) Multi-regional Access Sites or improvements;
 - (6) Urban waterfront development access projects;
 - (7) Reconstruction or relocation of existing, damaged facilities;
 - (8) Reconstruction or replacement of aging facilities; and
 - (9) Offsite parking areas servicing access sites within the local government's jurisdiction.
- (c) The following criteria shall be used to select projects that may receive financial assistance:
 - (1) Applicant demonstrates a need for the project due to a high demand for public access and limited availability;

- (2) Project is identified in the local land use plan or local access plan;
- (3) Applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
- (4) Applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Paragraphs (d) and (e) of this Rule;
- (5) Project proposal includes multiple funding sources;
- (6) The project location includes donated land deemed unbuildable due to regulations or physical limitations;
- (7) Applicant has demonstrated its ability to complete previous projects successfully with funds from this grant program.

(d) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities which shall have a contribution of at least 10 percent. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.

(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.

(f) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other state programs.

(g) Multi-phase projects and previous contingency projects shall be considered on their own merits within the pool of applications being reviewed in any year.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. February 1, 2009; September 1, 2007; August 1, 2000.*

15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE

Prior to submitting its final application for a public access grant from the Division of Coastal Management, the local government shall hold a public meeting or hearing to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998.*

15A NCAC 07M .0309 COMPLIANCE WITH THE NORTH CAROLINA ENVIRONMENTAL POLICY ACT

The public access program shall comply with the requirements of the North Carolina Environmental Policy Act (NCEPA) and rules adopted by the Department of Environment and Natural Resources concerning NCEPA implementation as set out in 15A NCAC 1C .0201 - .0504. Future amendments by the Department shall be deemed to be incorporated into this Rule pursuant to G.S. 150B-14(c).

*History Note: Authority G.S. 113A-2; 113A-124;
Eff. July 1, 1990;
Recodified from .0306 Eff. January 1, 1998;
Amended Eff. January 1, 1998;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.*

SECTION .0400 – COASTAL ENERGY POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the state and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized and equally important public interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits of necessary energy development with the need to 1) protect valuable coastal resources and 2) preserve access to and utilization of public trust resources, the planning of future uses affecting both land and public trust resources, the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon vital coastal resources or uses, public trust areas and public access rights.

(b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions of this Subchapter as well as any other applicable federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other relevant energy facilities shall contain sufficient information to allow analysis of the consistency of all proposed activities with these Rules.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000.*

15A NCAC 07M .0402 DEFINITIONS

(a) "Impact Assessment" is an analysis which discusses the potential environmental, economic and social consequences, including cumulative and secondary impacts, of a proposed major energy facility. At a minimum, the assessment shall include the following and for each of the following shall discuss and assess any effects the project will have on the use of public trust waters, adjacent lands and on the coastal resources, including the effects caused by activities outside the coastal area:

- (1) a discussion of the preferred sites for those elements of the project affecting the use of public trust waters, adjacent lands and the coastal resources:
 - (A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full discussion [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
 - (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present evidence to support the proposed location over a feasible alternate site;
 - (C) In those cases where an applicant chooses a site previously identified by the state as suitable for such development and the site is outside an AEC or not on a barrier island, alternative site considerations shall not be required as part of this assessment procedure;
- (2) a discussion of the economic impacts, both positive and negative, of the proposed project. This discussion shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This discussion shall include analysis of likely adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts of significance;
- (3) a discussion of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;

- (4) a discussion of potential adverse impacts on existing industry and potential limitations on the availability of, and accessibility to, coastal resources, including beach compatible sand and water, for future use or development;
- (5) a discussion of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;
- (6) a discussion of potential risks to human life or property;
- (7) a discussion of the impacts on the human environment including noise, vibration and visual impacts;
- (8) a discussion of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
- (9) other specific data necessary for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;
- (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed.
- (11) a specific demonstration that the proposed project is consistent with relevant local land use plans and with guidelines governing land uses in AECs.

Any impact assessment for a proposed major energy facility shall include a discussion of the items described in Subparagraphs (a)(1) through (11) of this Rule for the associated energy exploration or development activities including all foreseeable assessments of resource potential, including the gathering of scientific data, exploration wells, and any delineation activities that are likely to follow development, production, maintenance and decommissioning.

(b) "Major energy facilities" are those energy facilities which because of their size, magnitude or scope of impacts, have the potential to affect any land or water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include, but are not necessarily limited to, the following:

- (1) Any facility capable of refining petroleum products;
- (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum products or synthetic gas;
- (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other equipment necessary for the operation of a wind generating facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, capable of generating three megawatts or larger;
- (6) Thermal energy generation;
- (7) Major pipelines 12 inches or more in diameter that carry petroleum products or synthetic gas;
- (8) Structures, including drillships and floating platforms and structures relocated from other states or countries, located in offshore waters for the purposes of energy exploration, development or production; and
- (9) Onshore support or staging facilities related to offshore energy exploration, development or production.

(c) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
 Eff. March 1, 1979;
 Amended Eff. October 1, 1988;
 Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997.
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;
 Amended Eff. March 1, 2011; August 1, 2000.*

15A NCAC 07M .0403 POLICY STATEMENTS

(a) The placement and operations of major energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resources of North Carolina shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and state guidelines in 15A NCAC 07H and 07M. The

placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and with use standards for development within AECs, as set forth in 15A NCAC 07H.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, aerial extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resource shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (2) For petroleum facilities, necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information must demonstrate that the potential for petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring an Oil Spill Response Plan, this information shall be included in such a plan;
- (3) Dredging, spoil disposal and construction of related structures that are likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine environment;
- (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or interference is likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources;
- (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that significant adverse impacts on the use of public trust waters, adjacent lands and coastal resources shall be avoided;
- (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;

- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing inlets;
- (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
 - (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
 - (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
 - (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
 - (D) anchorage areas and port areas;
 - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
 - (F) dump sites;
 - (G) primary dunes and frontal dunes;
 - (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges and other areas used in a like manner;
 - (I) military air space, training or target area and transit lanes;
 - (J) cultural or historic sites of more than local significance; and
 - (K) segments of Wild and Scenic River System.
- (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided; and
- (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
 Eff. March 1, 1979;
 Amended Eff. April 1, 1992;
 Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;
 Amended Eff. February 1, 2011; August 1, 2000.*

SECTION .0500 - POST-DISASTER POLICIES

15A NCAC 07M .0501 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that all state agencies coordinate their activities to reduce the damage from coastal disasters. As predisaster planning can lay the groundwork for better disaster recovery, it is the policy of the State of North Carolina that adequate plans for post-disaster reconstruction should be prepared by and coordinated between all levels of government prior to the advent of a disaster.

*History Note: Authority G.S. 113A-102; 113A-107; 113A-120; 113A-124(c);
Eff. October 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

15A NCAC 07M .0502 DEFINITIONS

Disaster planning activities are those activities which a local government undertakes in an effort to mitigate the possible effects of a coastal natural disaster, including the preparation and adoption of policies and implementation ordinances. All areas which have been identified as ocean hazard areas of environmental concern by the Coastal Resources Commission or as flood hazard areas by the Federal Emergency Management Agency shall be referred to as hazardous areas.

*History Note: Authority G.S. 113A-102; 113A-107; 113A-120; 113A-124(c);
Eff. October 1, 1982;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.*

15A NCAC 07M .0503 POLICY STATEMENTS

(a) The lead responsibility for directing all disaster warning, evacuation and relief activities lies with the Secretary of the Department of Crime Control and Public Safety. The North Carolina Coastal Management Program will assist the Department of Crime Control and Public Safety in preparing plans and providing services to disaster areas.

- (1) The Coastal Resources Commission (hereafter referred to as "Commission") will establish procedures for streamlining permit procedures for post-disaster reconstruction.
- (2) The Division of Coastal Management (hereinafter referred to as "Division") will provide staff support to Crime Control and Public Safety as requested. Types of assistance which may prove helpful are assistance with damage assessment, participation at the disaster assistance center, and advice and assistance to State and federal public assistance offices.
- (3) The Commission will require that local governments include disaster planning activities in their land use plans.

(b) The most effective and cost-efficient manner of dealing with natural disasters is mitigation. The Commission hereby establishes guidelines for planning to mitigate the effects of natural disasters.

- (1) The Commission will advise the North Carolina Building Code Council and the Federal Insurance Administration on standards for development in coastal hazard areas.
- (2) The Commission will establish guidelines for local governments to establish reconstruction plans which contain:
 - (A) local plans and policies pertaining to desired relocation of public and private development;
 - (B) local policies pertaining to desired relocation of roads and utilities such as water, sewer, and electricity;
 - (C) local plans for possible public acquisition of hazardous areas, if desirable for public access or use;
 - (D) a detailed inventory of structures in hazardous areas to assist in determining damage;
 - (E) a list of property owners and addresses to assist in notifying of damage;
 - (F) local disaster plans shall be coordinated with mitigation plans prepared for the Federal Emergency Management Agency; and

- (G) city and county plans shall be coordinated within counties and with adjoining jurisdictions.
- (3) The Commission and office will advise the Department of Transportation and all public utilities as to the applicable policies and standards for development in areas where roads, bridges, water and sewer lines and other utilities are to be reconstructed or replaced. These policies include:
 - (A) Before damaged utilities and/or roads are rebuilt, the locations of existing easements and rights-of-ways in relation to new and future shorelines shall be assessed both as to their future safety from storm and erosion damage and their relationship to future development patterns.
 - (B) Within easements and rights-of-way, utilities and/or roads should be placed as far landward as practicable.
 - (C) If existing easements and rights-of-ways are too close to the shoreline to be safely used, new easements and rights-of-ways that are freer from coastal hazards shall be sought.
 - (D) If existing easements and rights-of-ways are too close to the shoreline to safely allow development seaward of them, the easements and rights-of-ways should be relocated landward unless there is public open-space acquisition of these lands.
 - (E) All utilities and roads shall be rebuilt according to sound coastal engineering practices and to the standards listed in (b)(6)(A) in this Rule to assure that damages from storms are minimized.
- (4) The Commission and office will notify agencies responsible for public works projects that dunes, berms, and other flood control structures shall be rebuilt only in line with local plans.
- (5) Temporary emergency housing should be located outside of hazardous areas.
- (6) All repair and rebuilding of private and public structures shall be done in a safe and sound manner.
 - (A) All reconstruction shall comply with the standards of the Guidelines for Areas of Environmental Concern, North Carolina Building Code (including wind resistant standards), the National Flood Insurance Program and local reconstruction plans.
 - (B) If land is resubdivided, all lots shall allow adequate room for construction under the standards listed in this Rule.
- (7) If located in areas desirable for public access or use, lots upon which structures have been destroyed should be acquired for public use.
 - (A) Local governments should establish policies in their local land use plans for public acquisition of highly vulnerable areas for public access and use in their land use plans.
 - (B) The Federal Emergency Management Agency and other state and federal agencies should provide monies for public acquisition rather than continuing to fund rebuilding in high hazard areas.

*History Note: Authority G.S. 113A-119; 113A-124(b);
 Eff. October 1, 1982;
 Amended Eff. May 1, 1990.*

SECTION .0600 - FLOATING STRUCTURE POLICIES

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that floating structures to be used for residential or commercial purposes not infringe upon the public trust rights nor discharge into the public trust waters of the coastal area of North Carolina.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

15A NCAC 07M .0602 DEFINITIONS

(a) A boat is a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.

(b) A "floating structure" is any structure, not a boat, supported by a means of flotation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure will be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

15A NCAC 07M .0603 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in permitted marinas.

(b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

SECTION .0700 - MITIGATION POLICY

15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY

(a) It is the policy of the State of North Carolina to require that adverse impacts to coastal lands and waters be mitigated or minimized through proper planning, site selection, compliance with standards for development, and creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained as complete and functional systems by mitigating the adverse impacts of development as much as feasible by enhancing, creating, or restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.

(b) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies and objectives set forth in the Coastal Area Management Act for coastal resource management and development. Mitigation shall be used to enhance coastal resources and offset any potential losses occurring from approved and unauthorized development. Proposals to mitigate losses of coastal resources shall be considered only for those projects shown to be in the public interest, as defined by the standards in 15A NCAC 7M .0703, and only after all other reasonable means of avoiding or minimizing such losses have been exhausted.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1985.*

15A NCAC 07M .0702 DEFINITIONS

For the purposes of this policy statement mitigation is defined as the enhancement, creation, or restoration of coastal resources to maintain the characteristics and processes of coastal ecosystems such as natural biological productivity, habitat and species diversity, physical integrity, water quality and aesthetics.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984.*

15A NCAC 07M .0703 MITIGATION CANDIDACY

(a) The CRC may approve a development project for mitigation candidacy if the applicant can demonstrate that all of the following criteria can be met:

- (1) there is no reasonable or prudent alternate design or location for the project that would avoid the losses to be mitigated;
- (2) the entire project for which the permit is requested is dependent upon being located within or in close proximity to public trust waters and coastal wetlands;
- (3) benefits to the public interest will clearly outweigh the long range adverse effects to the environment. A benefit to the public interest may be established by a project which has been clearly shown to be the least damaging alternative and which:
 - (A) if publicly funded creates benefits of national or state importance. This category may include but is not limited to public roadways, navigation projects, state ports, and projects designed to provide public access to the water;
 - (B) if privately funded provides increased access opportunities available to the general public for free or for a nominal fee, or provides significant economic benefits to the state or community in accord with the local land use plan;
- (4) all reasonable means and measures to lessen the impacts of the project have been incorporated into the project design.

(b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC 7M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the environment overwhelmingly outweigh environmental losses.

(c) Mitigation candidacy may be considered by the CRC during the permit processing time prescribed in 15A NCAC 7J .0204, in accordance with the procedures set out in 15A NCAC 7J .0600 concerning declaratory rulings. The applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 7M .0703(a) provided that

the applicant agrees that the permit processing time period will not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission in obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior to presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be introduced at the meeting. CRC approval of the mitigation candidacy is binding on the Commission and the person requesting it, in accordance with 15A NCAC 7J .0603(e).

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984; Amended Eff. September 1, 1985.

15A NCAC 07M .0704 POLICY STATEMENTS

(a) The following forms of mitigation are ranked in order of preference:

- (1) Enhancement of coastal resources with created or restored systems determined to be potentially more productive of the resources characteristic of unaltered North Carolina ecosystems than those destroyed.
- (2) Creation or restoration of an area of similar ecological utility and potential biological value than that destroyed or altered.
- (3) Creation or restoration of an area with a desirable but different ecological function or potential than that destroyed or altered.
- (4) The following forms of mitigation will be considered even though they do not meet the definition in 15A NCAC 7M .0702. They are actions which by themselves shall not be deemed adequate to offset habitat losses, but may be used in combination with Subparagraphs (a) (1) through (3) to achieve the stated goal of these Rules.
 - (A) Acquisition for public ownership of unique and ecologically important systems not protected by state and/or federal regulatory programs. The type of impacts to be mitigated and the quality of the area to be acquired will be considered on a case-by-case basis.
 - (B) Transfer of privately owned lands subject to state and federal regulatory control into public ownership.
 - (C) Provisions of funds for research or for management programs.
 - (D) Increased public access for recreational use.

(b) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general or specific use standards set forth in 15A NCAC 7H .0208. If a development represents no significant loss to coastal resources, the mitigation proposal must be on-site, or proximate thereto, and must be designed to enhance the coastal environment.

(c) Mitigation proposals to offset losses associated with publicly funded projects shall be reviewed by the staff with the sponsoring agency and incorporated into project plans.

(d) Approved mitigation proposals for all categories of development shall become a part of permit conditions according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126 and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant and the CRC.

(e) Those projects consistent with the review criteria for permit approval shall be exempt from mitigation requirements.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984.

15A NCAC 07M .0705 REVIEW PROCEDURES

Initial denials of mitigation candidacy, pursuant to the procedures of 15A NCAC 7M .0703(c), and permit denials, based on inconsistency with 15A NCAC 7H .0208, which are to be offset by mitigation proposals shall be reviewed by the CRC through the appeal procedures set forth in 15A NCAC 7J .0300.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984; Amended Eff. November 1, 1984.

SECTION .0800 - COASTAL WATER QUALITY POLICIES

15A NCAC 07M .0801 DECLARATION OF GENERAL POLICIES

(a) The waters of the coastal area are a valuable natural and economic resource of statewide significance. Traditionally these waters have been used for such activities as commercial and recreational fishing, swimming, hunting, recreational boating, and commerce. These activities depend upon the quality of the waters. Due to the importance of these activities to the quality of life and the economic well-being of the coastal area, it is important to ensure a level of water quality which will allow these activities to continue and prevent further deterioration of water quality. It is hereby declared that no land or water use shall cause the degradation of water quality so as to impair traditional uses of the coastal waters. To the extent that statutory authority permits, the Coastal Resources Commission will take a lead role in coordinating these activities.

(b) It is further recognized that the preservation and enhancement of water quality is a complex issue. The deterioration of water quality in the coastal area has many causes. The inadequate treatment of human wastes, the improper operation of boats and their sanitation devices, the creation of increased runoff by covering the land with buildings and pavement and removing natural vegetation, the use of outdated practices on fields and woodlots and many other activities impact the water quality. Activities outside the coastal area also impact water quality in the coastal area. Increases in population will continue to add to the water quality problems if care is not taken in the development of the land and use of the public trust waters.

(c) Protection of water quality and the management of development within the coastal area is the responsibility of many agencies. It is hereby declared that the general welfare and public interest require that all state, federal and local agencies coordinate their activities to ensure optimal water quality.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. s. 1453(12);
Eff. November 1, 1985.

15A NCAC 07M .0802 POLICY STATEMENTS

(a) All of the waters of the state within the coastal area have a potential for uses which require optimal water quality. Therefore, at every possible opportunity, existing development adjacent to these waters shall be upgraded to reduce discharge of pollutants.

(b) Basinwide management to control sources of pollution both within and outside of the coastal area which will impact waters flowing into the rivers and sounds of the coastal area is necessary to preserve the quality of coastal waters.

(c) The adoption of methods to control development so as to eliminate harmful runoff which may impact the sounds and rivers of the coastal area and the adoption of best management practices to control runoff from undeveloped lands is necessary to prevent the deterioration of coastal waters.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. s. 1453(12);
Eff. November 1, 1985;
Amended Eff. October 1, 1988.

SECTION .0900 - POLICIES ON USE OF COASTAL AIRSPACE

15A NCAC 07M .0901 DECLARATION OF GENERAL POLICY

It is hereby declared that the use of aircraft by state, federal and local government agencies for purposes of managing and protecting coastal resources, detecting violations of environmental laws and rules and performing other functions related to the public health, safety and welfare serves a vital public interest. The Commission further finds that future economic development in the coastal area and orderly management of such development requires air access to and among coastal communities.

*History Note: Authority G.S. 113A-102(b); 113A-107; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1990;
RRC Objection due to lack of necessity Eff. October 17, 1991;
Amended Eff. March 1, 1992;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.*

15A NCAC 07M .0902 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that access corridors free of special use airspace designations shall be preserved along the length of the barrier islands and laterally at intervals not to exceed 25 miles to provide unobstructed access both along the coastline and from inland areas to the coast. Such access corridors shall extend from the surface to an altitude of 6000 feet above sea level except where communication and radar services allow positive aircraft control at lower altitudes.

(b) Development of aviation-related projects and associated airspace management practices shall, to the maximum extent practicable, facilitate use of aircraft by local, state and federal government agencies for purposes of resource management, law enforcement and other activities related to the public health, safety and welfare. In any case, access to restricted areas shall be provided on a periodic basis for routine enforcement flights and access shall be provided on an emergency basis when required to respond to an immediate threat to public health and safety.

*History Note: Authority G.S. 113A-102(b); 113A-107;
Eff. March 1, 1990.*

**SECTION .1000 - POLICIES ON WATER AND WETLAND BASED TARGET AREAS FOR MILITARY TRAINING
ACTIVITIES**

15A NCAC 07M .1001 DECLARATION OF GENERAL POLICY

The use of water and wetland-based target areas for military training purposes may result in adverse impacts on coastal resources and on the exercise of public trust rights. The public interest requires that, to the maximum extent practicable, use of such targets not infringe on public trust rights, cause damage to public trust resources, violate existing water quality standards or result in public safety hazards.

*History Note: Authority G.S. 113A-102(b); 113A-107;
Eff. March 1, 1990.*

15A NCAC 07M .1002 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that all public trust waters subject to surface water restrictions pursuant to 33 USCS 3 for use in military training shall be opened to commercial fishing at established times appropriate for harvest of the fisheries resources within those areas.

(b) Where laser weaponry is used, the area of restricted surface waters shall be at least as large as the recommended laser safety zone.

(c) Water quality shall be tested periodically in the surface water restricted areas surrounding such targets and results of such testing shall be reported to the Department.

*History Note: Authority G.S. 113A-102(b); 113A-107;
Eff. March 1, 1990.*

SECTION .1100 - POLICIES ON BENEFICIAL USE AND AVAILABILITY OF MATERIALS RESULTING FROM THE EXCAVATION OR MAINTENANCE OF NAVIGATIONAL CHANNELS

15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY

Certain dredged material disposal practices may result in removal of material important to the sediment budget of ocean and inlet beaches. This may, particularly over time, adversely impact important natural beach functions especially during storm events and may increase long term erosion rates. Ongoing channel maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal sites as existing sites fill. This is a financially and environmentally costly undertaking. In addition, new sites for disposal are increasingly harder to find because of competition from development interests for suitable sites. Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of navigation channels be used in a beneficial way wherever practicable.

*History Note: Authority G.S. 113A-107;
Eff. October 1, 1992.*

15A NCAC 07M .1102 POLICY STATEMENTS

- (a) Clean, beach quality material dredged from navigation channels within the active nearshore, beach, or inlet shoal systems must not be removed permanently from the active nearshore, beach or inlet shoal system unless no practicable alternative exists. Preferably, this dredged material will be disposed of on the ocean beach or shallow active nearshore area where environmentally acceptable and compatible with other uses of the beach.
- (b) Research on the beneficial use of dredged material, particularly poorly sorted or fine grained materials, and on innovative ways to dispose of this material so that it is more readily accessible for beneficial use is encouraged.
- (c) Material in disposal sites not privately owned shall be available to anyone proposing a beneficial use not inconsistent with Paragraph (a) of this Rule.
- (d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is in the public interest and shall be encouraged at every opportunity.

*History Note: Authority G.S. 113A-107;
Eff. October 1, 1992.*

SECTION .1200 - POLICIES ON OCEAN MINING

15A NCAC 07M .1201 DECLARATION OF GENERAL POLICY

(a) The Atlantic Ocean is designated a Public Trust Area Of Environmental Concern (AEC) out to the three-mile state jurisdictional boundary; however, the ocean environment does not end at the state/federal jurisdictional boundary. Mining activities impacting the federal jurisdiction ocean and its resources can, and probably would, also impact the state jurisdictional ocean and estuarine systems and vice-versa. Therefore, it is state policy that every avenue and opportunity to protect the physical ocean environment and its resources as an integrated and interrelated system will be utilized.

(b) The usefulness, productivity, scenic, historic and cultural values of the state's ocean waters will receive the greatest practical degree of protection and restoration. No ocean mining shall be conducted unless plans for such mining include reasonable provisions for protection of the physical environment, its resources, and appropriate reclamation or mitigation of the affected area as set forth and implemented under authority of the Mining Act (G.S. 74-48) and Coastal Area Management Act (G.S. 113A-100).

(c) Mining activities in state waters, or in federal waters insofar as the activities affect any land, water use or natural or historic resource of the state waters, shall be done in a manner that provides for protection of those resources and uses. The siting and timing of such activities shall be consistent with established state standards and regulations and shall comply with applicable local land use plan policies, and AEC use standards.

*History Note: Authority G.S. 113A-102; 113A-103; 113A-107;
Eff. August 1, 1998.*

15A NCAC 07M .1202 POLICY STATEMENTS

(a) Impacts from mining activities involving dredging, blasting, or other methods of excavation, spoil disposal, or construction of related structures that can be expected to affect the physical ocean environment or its resources shall be identified and minimized. Any significant unavoidable damages from these actions shall be mitigated under the procedures set out in 15A NCAC 7M .0700.

(b) Damage to or interference with existing or traditional public trust uses, such as fishing, navigation, or access to public trust areas, or areas with high biological, historical archaeological, or recreational value are activities that significantly affect land or water uses or natural resources of the coastal area. Damage to or interference with existing or traditional public trust uses shall be minimized.

(c) Offshore reefs, rock outcrops, hard bottom areas, and other significant living resource habitat shall be avoided unless it can be demonstrated that the mining activity will not significantly adversely affect these resources, land or water uses or the natural resources of the coastal area, or unless their existing biological functions can be sustained through mitigation.

*History Note: Authority G.S. 113A-102; 113A-107;
Eff. August 1, 1998.*