

**NC COASTAL RESOURCES COMMISSION (CRC)**

**May 10-11, 2016**

**Dare County Administration Building  
Manteo, NC**

**Present CRC Members**

Frank Gorham, Chair  
Renee Cahoon, Vice-Chair  
Neal Andrew, Second Vice-Chair

Gwen Baker  
Larry Baldwin  
Denise Gibbs  
Greg Lewis  
Phil Norris

Russell Rhodes  
Jamin Simmons (absent 5/11/16)  
John Snipes  
Bill White

**Present CRAC Members**

Spencer Rogers, Vice-Chair  
Rudi Rudolph, Vice-Chair  
John Brodman  
Jett Ferebee  
Johnny Martin  
David Moye  
Kris Noble  
Bobby Outten  
Todd Roessler  
Lee Wynns

**Present Attorney General's Office Member**

Mary Lucasse

**CALL TO ORDER/ROLL CALL**

Frank Gorham called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Marc Hairston was absent. No conflicts were reported. Based upon this roll call Chairman Gorham declared a quorum.

**CHAIRMAN'S COMMENTS**

Chairman Gorham requested that photos of Commissioners be added to the website. It would be helpful for the public to be able to recognize the Commissioners. Michele Walker will arrange for photos to be taken at the July meeting.

## MINUTES

**Renee Cahoon made a motion to approve the minutes of the February 2016 Coastal Resources Commission meeting. Larry Baldwin seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Hairston, Lewis, Norris, Rhodes, Simmons, Snipes, White)(Baker abstained).**

## EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I will start with a report on the changes that have occurred with respect to my position since our last meeting. As you may have heard, DEQ Secretary van der Vaart recently asked me to serve as the Director of both the Division of Marine Fisheries and the Division of Coastal Management while evaluating opportunities for improvements and looking for efficiencies across the two programs. Obviously this is a major undertaking, and I sincerely appreciate the support I've received from members of both commissions, staff at both agencies, and the various interest groups that I've begun to meet with over the past two weeks. I have a great deal of respect for the people and the work of both agencies and commissions. I promise that I will listen to all of you, to the public, and to our staff; and that I will be objective and will carefully consider the implications of any decisions or recommendations that come out of this study. In coordination with senior staff at DMF and DCM, we are beginning to develop a six-month plan and process for a review of the operations, programs, procedures, and management frameworks of both agencies. I want to be clear that there is no predetermined outcome for this review. We will identify best practices at both organizations, look for possible efficiencies, and consider opportunities for enhanced cooperation across various program areas for the benefit of our staff, stakeholders, and resources. As this process begins, I hope you too will bring forward your ideas. All input is welcome. When I'm not traveling up and down the coast, I will be spending most of my time at the DMF headquarters in Morehead City. Especially in the early going, as I get up to speed on fisheries issues, I will need to spend considerably more time with DMF staff, stakeholders, and the Marine Fisheries Commission to learn as much as I can in the coming months. I am also keeping my office at DCM and plan to continue working closely with you, the staff, and coastal stakeholders on high priority issues. I'm trying to spend at least one full day per week in the DCM office and I'm continuing to attend our regular staff meetings. We are relying on Mike Lopazanski for managing the day-to-day operations of DCM as Acting Asst. Director. He is serving as the central point of contact for staff, and bringing high priority issues to me for review. I truly appreciate his willingness to step up during this review process and I know he will do a great job.

### **Legislative Update**

The NC General Assembly short session began April 25. So far, only one bill has been filed that affects the division, Senate Bill 793 eliminates or consolidates several DEQ reports to the Environmental Review Commission. It would eliminate the bi-annual NC Beach and Inlet Management Plan implementation reports, consolidate reports associated with the Coastal Habitat Protection Plan, and decrease the reporting frequency of reports on the permitting of terminal groins. A legislative budget has not yet been released and the governor's budget has no changes to DCM's appropriated budget. This afternoon you'll hear an update on several legislative studies we've been working on from the 2015 Appropriations Act. These studies include the Cape Fear Estuarine Resource Restoration; Beach Erosion Study; and Oyster Restoration Permitting. While you have already had a preliminary introduction to these studies, Staff will provide more details now that they have been approved by the Department and delivered to the General Assembly.

In addition to these, you may recall that the Coastal Reserve program was one of six programs included in a study authorized by that same bill (section 14.31.(a-b)) to examine further efficiencies in the organization of the Department of Natural and Cultural Resources and the Department of Environmental Quality. The study considered whether the Coastal Reserve program should be transferred from DEQ to DNCR for potential efficiency, cost savings, and alignment of core mission and values. The efficiencies study report was submitted to the General Assembly in April and recommends not transferring the Coastal Reserve program from DEQ to DNCR at this time. The full report is located on the General Assembly's website and at this time, we are awaiting further direction from the General Assembly.

### **Regulatory**

On the regulatory side, major permit applications are steady compared to the same period in 2015. 54 major permits have been issued so far this year, as opposed to 56 within the same time frame in 2015. However, General Permits are way up, with 550 so far this year in comparison with 500 last year at this point. Notable permit actions since your last meeting include the issuance of permits to five local governments that adjoin shallow draft inlets. These communities include Emerald Isle, Topsail Beach, New Hanover County (on behalf of Carolina Beach), Holden Beach and Ocean Isle Beach. These five communities now have permits allowing them to carry out the same maintenance excavation activities, beneficial sand placement, and other actions that are currently carried out by the USACE for the management of these shallow draft inlets. This is important due to uncertainties over future federal funding for such activities. The DEQ Division of Water Resources provided partial funding to hire a consultant who worked with the Corps of Engineers, State, and local governments to prepare the permit application packages and associated environmental documents for this effort. The Division of Coastal Management used innovative permitting procedures that further helped accommodate this unique set of projects. On March 30th, DCM received a draft BOEM federal consistency submission regarding a proposal to issue a commercial wind energy lease within the Kitty Hawk Wind Energy Area. The proposed lease involves site assessment activities, including the placement of meteorological towers and/or buoys that would determine whether the lease is suitable for, and would support, commercial-scale wind energy production. We anticipate a formal federal consistency submission will be submitted to DCM sometime this summer and at that time DCM will conduct a public notice, a public hearing, and will circulate the submission to other resource agencies including WRC and DMF.

### **Coastal Reserves**

The Coastal Reserve Local Advisory Committees will be meeting throughout May and June, with the northern sites' committees meeting this week. The Committees will discuss site-specific business as well as Reserve-wide business such as the upcoming periodic rules review which you'll hear more about tomorrow from Jennifer Everett, the Department's Rulemaking Coordinator. Meeting dates and locations can be found on the Reserve's event calendar. The Reserve is hosting a free Getting to Know Wetlands workshop on May 17th in Beaufort for local government staff, land use planners, landscape architects, engineers, and other professionals who work in wetland environments. The workshop will focus on the environmental importance of wetlands and on development rules and permitting related to coastal and freshwater wetlands. The workshop provides continuing education credits for Certified Planners, Landscape Architects, and P.E.'s. Registration is required; visit the Coastal Reserve's website to view the agenda or register for the workshop. The Reserve is offering a number of summer programs in the coming months including summer camps for children, field trips to the Rachel Carson and Masonboro Island Reserves, and a

Teachers on the Estuary professional development workshop. More details are on the Reserve's event calendar.

### **Policy & Planning**

We are pleased to announce that in response to our solicitation for Local Planning & Management Grant Program projects, the Division received 10 applications from local governments requesting \$150,000. The projects have been reviewed and we expect the recipients to receive official notification within the next two weeks. The Division has \$75,000 available for grants of up to \$15,000. The awarded projects will focus on assisting local governments in developing and implementing land use plans and management strategies for their coastal resources that are consistent with the state guidelines. In other grant news, DCM received 22 pre-applications from local governments requesting over three million dollars for Public Beach and Coastal Waterfront Access Program projects. The Division has approximately \$1.4M available and has invited 13 local governments to submit final applications, which are due August 15, 2016. The Division expects to make final awards by September.

### **Staffing News**

Christy Goebel has accepted a position with DEQ's Office of General Counsel to continue her work in support of DCM and for partial support of DMF legal needs. We are very happy to have her back working with us, and to have her here at the meeting today. This is great news for DCM, for the Commission, and for our customers. I am also pleased to announce that Cynthia Rountree has joined the Elizabeth City office as a new Field Representative. Cynthia has worked for the last eight years with DMF in Elizabeth City in the river herring program and for four years with NCWRC at their fish hatchery. Scott Crocker, Northern Sites Manager for the Coastal Reserve, left the Division in March to take a position with NC State Parks as the State Trail Program Manager. Scott was with our program for three years and made significant progress in advancing the protection and management of the Currituck Banks, Kitty Hawk Woods, and Buxton Woods Coastal Reserves. We wish Scott well in his new endeavors. The vacant position will be posted in the near future.

### **CRAC REPORT**

Rudi Rudolph stated the CRAC discussed the changes to the sandbag regulations that will be presented to the Commission at this meeting. We discussed the material used for sandbags and requested that staff come back to the CRAC with recommendations as to whether we should add requirements in the rules. The CRAC is requesting that more time, a minimum of two hours, be allotted for CRAC meetings.

### **LEGISLATIVE STUDIES**

#### **Cape Fear Estuarine Resource Restoration "The Rocks" Update (CRC 16-17)**

##### **Rebecca Ellin**

Rebecca Ellin stated the Department submitted its report to the General Assembly on April 6, 2016, and is currently awaiting further direction from the General Assembly. The full report and all of the letters and responses to the request for information are included in the report. The Cape Fear Estuarine Resource Restoration as outlined in Section 14.6(h) of Session Law 2015-241 finds that the New Inlet Dam was constructed by the Army Corps of Engineers in the late nineteenth century and is comprised of two different components, the northern and southern component. The southern component is the focus of this piece of legislation. The southern component is also defined as the Swash Defense Dam by the Army Corps of Engineers. This section of the legislation also finds that the southern component of the dam impedes the natural flow of water between the Cape Fear River and the Atlantic Ocean that occurred prior to the placement of the dam. Lastly, the legislation finds

that it is necessary to consider removal of the southern component of the dam in order to re-establish the natural hydrodynamic flow between the Cape Fear River and the Atlantic Ocean. The Department was required to notify the Army Corps of Engineers of the State's intent to study the removal of the southern component of the New Inlet Dam, issue a request for information for a firm capable of conducting an analysis of the costs and benefits of removing the southern portion, and request approval from NOAA to adjust the boundary for the Zeke's Island component of the NC National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreation Area. If NOAA approves the boundary adjustment, then the Coastal Resources Commission is required to amend the Reserve Component Rule as described in the Act. A letter was sent to the Army Corps of Engineers and the Division received a very thorough response from the Corps. The letter included a history of the construction of the New Inlet Dam and Swash Defense Dam. It also provided an overview of the Wilmington Harbor Project, the Corps' perspective on this section of the Appropriations Act, an overview of the regulatory processes that would be required for removal of the dam, and a list of unresolved issues that should be addressed including the identification of the purpose and need for such a project, shoaling and the need for maintenance of the navigation channel, financing of the project and project maintenance, consideration of project alternatives, evaluation of direct and indirect environmental impacts and cultural resource issues, and clarity with respect to which entities would be speaking on behalf of the State if this project moves forward. The request for information on a cost/benefit analysis was published by the Department in January 2016 and it was open for four weeks. Two responses were received. These responses provided information that should be considered if a cost benefit analysis moves forward including permits and approvals that would likely be needed at the local, state and federal levels and studies and surveys that would likely be needed in order to inform permitting and environmental review and assessment of navigation impacts. The Division sent a letter to NOAA requesting information on the process and specific submission requirements to request a boundary change to a component in the NC National Estuarine Research Reserve system. NOAA also provided a thorough letter in response indicating that considering a boundary change is a multi-step process that requires information on why lands and waters are proposed for addition or deletion, how the change will benefit the reserve either ecologically and/or programmatically, and the implications the change may have for buffer designations within the reserve. Detailed information is needed to meet these requirements and to evaluate the ecological, research, education and management implications that a proposed boundary change would have for the Zeke's Island Reserve. This information and evaluation is not currently available and a detailed study would be required in order to justify and request a boundary change to NOAA that meets these requirements. Given these requirements, the Department has not submitted a boundary change to NOAA. Although not required as part of the study, the Division also reached out to the Division of Parks and Recreation because of the connection to the Fort Fisher State Recreation Area and let them know that this legislation was in place. A response was received which requested additional information on how the proposed project may affect both the Fort Fisher State Recreation Area and also the Bald Head Island State Natural Area, specifically requesting more information on potential water quality impacts, possible extensive erosion impacts that may alter recreation and natural resource values, and potential impacts to habitats. The final step of the legislation was an action by the CRC to amend the reserve component rule, however since a request for a boundary change was not submitted to NOAA no action has been taken on this step. Additionally, the Reserve rules are departmental rules per the General Statutes in CAMA and the CRC would not have the authority to make that change.

## **Beach Erosion Study – Update (CRC 16-18)**

### **Ken Richardson**

Ken Richardson stated this report outlines the processes that effect erosion, both manmade and natural influences, and includes research efforts from past studies. The daily occurrences of wind, waves, current, and tides have a tremendous effect on the shoreline. Storms and their frequency also have a great impact on shoreline position on the beachfront. In addition, variations exist depending on whether you are on the northern end of the coast or the southern end. In the NC Beach and Inlet Management Plan (BIMP), the coast was divided into the southern and northern zones. The southern coast is characterized by relatively steep land slopes compared to the northern zone which has a gentler slope. The BIMP also established sub-regions along the coast to compare sediment transport and sediment budgets. Beach erosion is a natural process and not all places are eroding and all are not eroding at the same rate. The Division summarized possible mitigation strategies to address beach erosion issues. Current mitigative activities include beach nourishment, sandbag placement, terminal groins and jetties, inlet realignment, and relocation. These strategies are based on previous studies within the state, public comments, and lessons learned by the Division in administering the state's coastal program for over 30 years. The report acknowledges a need to data gaps in erosion hazard assessments and modeling and the potential effects of these gaps on policy and decision making. The report also supports additional data collection to establish sub-regional sediment budgets. The primary recommendation of the report is that beach management should be formalized at the local and sub-regional level and opportunities for regional collaboration with neighboring communities should be encouraged. Recommendations also include sensible construction setbacks to account for beach erosion and shoreline migration; regular evaluation of budgetary needs for erosion response projects, taking into consideration the prevailing and expected cost-share percentages among funding entities; establishment of stable and predictable funding sources sufficient to meet statewide needs; maximizing The amount of beach-compatible dredged material that is beneficially used in mitigating beach erosion;; continued streamlining of permitting for beach projects at the federal and state levels to decrease permit processing times, permitting costs, and emergency situations; And dedicated state agency staff support and technical assistance for local and regional beach management efforts. The draft report was submitted to the Department on January 15th and delivered to the General Assembly by the February 15, 2016 deadline.

## **Oyster Restoration Permitting (CRC 16-19)**

### **Doug Huggett**

Doug Huggett stated this report was a result of another legislatively mandated study in S.L. 2015-241 which looked at simplifying permitting oyster restoration projects. This study required DMF and DCM in consultation with representatives of non-governmental conservation organizations that work on oyster restoration projects to create a new permit process specifically designed for oyster restoration projects. The legislation directed DMF and DCM to develop a new permit type instead of a major permit under CAMA. There was also a requirement that the Department submit a report on these activities to the Environmental Review Commission by May 1st. By asking for a new permit type, this legislation eliminated the ability of the staff to implement any streamlining mechanisms or other tweaks to the permitting process to facilitate these projects and because General Permits are expedited forms of a CAMA Major Permit, the legislation, as written, does not allow for the development of a General Permit for oyster restoration projects. There were several meetings between Coastal Management staff and Marine Fisheries staff to brainstorm ideas that would meet the intent of the legislation while providing environmental oversight of oyster restoration projects. All of the ideas had one issue associated with them that could not be avoided which requires federal permitting of these activities. We have a joint permit process with the Army

Corps of Engineers that also includes multiple state resource agencies. If the CAMA major permit review process is eliminated, then the Corps will still need to review the application, which will result in a longer Corps review time. Agency Staff met with a stakeholder group which included the NC Coastal Federation, Nature Conservancy, researchers from UNCW, the Corps, National Marine Fisheries Service and DWR. The Corps expressed the same concern about the potential impact on federal permitting. The non-governmental conservation agencies also seemed to understand the complications and were in favor of an approach that would allow us to work on streamlining mechanisms within our major permit process. The best option is the development of a new regulatory exemption under Section 7K of the CRC's rules which will allow an oyster restoration project to move forward if it meets certain criteria. The primary purpose of the project needs to be to create habitat that over time resembles oyster habitat, both in structure and function. There would be limits on the types of material that can be used for oyster restoration. Shoreline stabilization projects, such as living shorelines and offshore sills, have an oyster restoration function associated with them but the main purpose of these projects is not for restoration but for shoreline stabilization and these projects would not be included in the exemption. To obtain the exemption from DCM, the applicant will have to provide the Division with the location of the proposed project, construction methodology, materials, maintenance of the site, and operational conditions. DCM would then coordinate with DMF to make sure the proposed location and design of the oyster restoration project has a reasonable expectation of success. At the same time, DCM will look at these projects from the perspective of navigation and public trust uses. After this review, the applicant can obtain an exemption that will allow them a minimum of three years to construct the project. However, if they do not obtain both of the certifications from DCM and DMF then these projects will need a more detailed environmental review through the CAMA major permit process. The report has been submitted to the Department for review so no action on the part of the Commission is needed at this time.

## **2015 COASTAL HABITAT PROTECTION PLAN (CHPP) UPDATE**

### **EMC Requested Changes and Conditional Approval (CRC 16-20)**

#### **Mike Lopazanski**

Mike Lopazanski stated that CRC adopted the CHPP update and recommendations at the February 2016 meeting. The Marine Fisheries Commission also adopted the update and recommendations. The Environmental Management Commission adopted the update, but conditionally endorsed the document based on some recommended changes. In the source document the EMC requested changes to distinguish dredging as a fishing activity versus a navigation activity, updating DENR to DEQ, and removing the word "voluntary" when it was incorrectly associated with certain stormwater best management practices. Because of these changes and the conditional approval, a conference committee was set up to review the requested changes. Chairman Gorham appointed commissioners Baldwin and Snipes to the conference committee which reviewed and approved the requested changes. The CHPP has been sent to the General Assembly. Commissioner Baldwin reiterated that the EMC's comments were minor and did not make any substantive changes in the document the CRC had previously adopted.

## **OCEANFRONT SHORELINE MANAGEMENT**

### **Update on Amendments to 15A NCAC 7H .0306 Grandfathering Provisions for Multi-family and Commercial Oceanfront Structures (CRC 16-21)**

#### **Tancred Miller**

Tancred Miller stated this has been a very complex fiscal analysis to prepare. This rule amendment will extend the grandfathering provision of oceanfront structures for commercial and multi-family residential oceanfront structures with a total floor area of no greater than 10,000 square feet. The

approach to the fiscal analysis was to determine how many structures this would affect and determine their monetary value. To find out the number of structures, we requested data from the county GIS and tax offices and pulled out all of the available oceanfront data. DCM determined if there was a structure on any of the parcels and the attributes for these structures including when the structure was built, the size of the structure and whether it is commercial or multi-family. Then we determined how many of these structures are currently non-conforming and the value based on how the industry accounts for the value of a non-conforming structure. We also identified some properties that cannot make the minimum setback and will not be able to utilize this provision. Staff is now in the process of contacting the Office of State Budget and Management (OSBM) to determine a reasonable way to quantify the differences between the way counties value or discount non-conforming structures. After consultation with OSBM, staff will submit the fiscal analysis to the Department for review and approval and then will submit to OSBM for approval. The Commission will be asked to review and approve the fiscal analysis at the July meeting and hold a public hearing at the September meeting. After considering any comments received, the amendment could be adopted by the Commission at the November 2016 meeting.

### **CRC SCIENCE PANEL**

#### **CRC Science Panel – Projects and Variances (CRC 16-24)**

##### **Ken Richardson**

Ken Richardson stated the CRC's Science Panel's purpose is to provide the Commission with scientific data and recommendations regarding processes including erosion, accretion, sand transport, and interactions with wind, waves and currents on the shoreline. The Panel has been charged with reviewing the state of knowledge of coastal processes, ecological functions of the coast of North Carolina, assessing the current methodologies used by North Carolina and others to define and identify areas subject to adverse impacts as a result of coastal processes. They are also charged with reviewing the scientific basis of the CRC's rules as applied by the Division to development in coastal areas and to develop recommendations for the CRC on topics that include opportunities to incorporate current information on North Carolina coastal processes into the CRC rules for estuarine and ocean areas, new coastal engineering technologies and methods, and specific projects as assigned by the Commission. Currently there are ten members on the Panel and five vacancies. The members are required to be experts in the fields of coastal processes and engineering. As per the Charge to the Panel, nominations for new members and ad hoc members may be made by members of the CRC, current Science Panel members, DCM staff, or CRAC at any public meeting of the Commission. New members and ad hoc members are appointed by the Chair of the CRC based on review of the nominees' relevant expertise and credentials with respect to coastal hazards and processes. New and replacement members are appointed as needed. DCM staff can send a call for nominations to the Science Panel if the CRC wishes to fill any of the vacancies on the Panel. After some discussion, the CRC Chair decided not to fill the vacancies at this time. Vacancies could be re-visited should a need arise.

The CRC's 2014 Inlet Management Study had a list of priorities for the Science Panel that includes completing work to define and update the Inlet Hazard Areas. The areas that were proposed by the Panel in 2010 will be a good starting point for defining areas influenced by inlet processes. Another short term priority listed recommendation was calculating inlet erosion rates. The Panel is planning to meet in August to look at the data and discuss the boundaries. The current Inlet Hazard Areas expired just before 1990 and these areas were last defined in 1979-1980. The Panel will look at updating the Inlet Hazard Areas and will identify areas within these areas with higher risk so the Commission can consider what development standards need to be updated within these areas. Staff will work with the Science Panel to prepare a scope of work for the Panel to defining the measure of



risk within each boundary associated with inlet influence at each inlet. The Commission will have the opportunity to review the scope of work at the July 2016 CRC meeting.

## **CRC RULE DEVELOPMENT**

### **NC APA Rulemaking Overview**

#### **Jennifer Everett**

Jennifer Everett, DEQ Rulemaking Coordinator, in the General Counsel's office in Raleigh. She discussed the permanent and temporary rulemaking process, made a brief mention of the emergency rulemaking process and concluded by discussing the periodic review and expiration of rules process. She noted that if a Commission already has statutory authority, then rulemaking is conducted to accomplish a specific purpose. The General Assembly can give a Commission additional statutory authority to conduct specific rulemaking on a particular topic or area. When a federal law changes, it sometime necessary to amend our state rules to reflect that change. Court orders can also initiate the permanent rulemaking process. This has happened with a couple of our Air Quality rules. Lastly, the Commission may begin rulemaking in response to a petition for rulemaking under the Administrative Procedures Act (APA). Permanent rulemaking begins with drafting proposed changes and developing a fiscal analysis. If the aggregate annual impacts, both the costs and benefits, to all parties are equal to or greater than one million dollars the rule is placed in the substantial economic impact category. This category entails a more rigorous alternative analysis and goes through a higher level of approval with OSBM. All fiscal analyses need OSBM review and approval. The Commission then approves the proposed rule and fiscal analysis for publication in the North Carolina Register for a sixty-day comment period. During that sixty days, the Commission holds at least one public hearing on the rule and fiscal analysis. After the comment period ends the Commission can consider comments and adopt the rule. The rule then goes to the Rules Review Commission (RRC). The RRC's review and approval is based on whether we followed the rulemaking statutes in the APA. The RRC meets every third Thursday of the month. Once they approve the rule, the rule becomes effective on the first day of the next month and is entered into the NC Administrative Code. Temporary rulemaking requires the Commission to consider whether there is a serious and unforeseen threat to the public's health, safety or welfare. A recent act of the General Assembly or Congress can also initiate the temporary rule process. The CRC recently went through this process following the General Assembly's directive on sandbags. A recent change in federal or state budgetary policy or a federal regulation change or court order can also call for the Commission to begin the temporary rulemaking process. Temporary rulemaking has to have been completed and adopted by the CRC and submitted to the RRC within 210 days of when the recent act had become effective unless you have been instructed differently by the General Assembly. Temporary rules expire after 270 days. If you want the rule to remain in the Administrative Code, then you must complete the permanent rulemaking process before the temporary rule expires. The temporary rule process has a shortened comment period and no fiscal note is required. Under emergency rulemaking, an agency may adopt a rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical if the findings of need statement indicates why notice and hearing are not necessary and why this rule is required because of a serious and unforeseen threat to the public health and safety. Temporary rulemaking must begin at the same time that the emergency rulemaking process begins. In 2013, the General Assembly passed House Bill 74 establishing the Periodic Review and Expiration of Existing Rules (G.S. 150B-21.3A). The statute gave the RRC authority to implement a process to ensure that all agencies subject to the rulemaking requirements of Article 2A of G.S. 150B review their existing rules every ten years. The CRC's 7B land use planning rules have already gone through this process. Under this review process, rules are classified as necessary with substantive public interest, necessary without substantive public interest and unnecessary. The CRC approves these rule classifications and then

they are posted on the DCM and OAH's websites for a sixty-day comment period. Following the comment period, the staff provide responses to any comments received and complete the report with the final classifications. The CRC then approves the response document and report which is then submitted to RRC for their approval. Following the RRC approval, the report is submitted to the Joint Legislative Administrative Procedures Oversight Committee (APO). Typically, the APO does not meet when the General Assembly is in session. Rules that were classified as necessary with substantive public interest have to be readopted by the CRC. These rules go through the permanent rulemaking process either with or without proposed changes. Rules that were classified as necessary without substantive public interest will remain in the Administrative Code with no further action. Unnecessary rules are deleted from the Code as if they had been repealed. The CRC's rules are scheduled for this review at the January 2018 RRC meeting. The Coastal Reserve rules in 15A NCAC 70 are due next year and while they are Departmental rules, they will come before the CRC for recommendations.

### **Use of Geotextile Tubes for Temporary Erosion Control (CRC 16-22)**

#### **Tancred Miller**

Tancred Miller stated there has been a longstanding conversation on the use of geotextile tubes for temporary erosion control. Most recently it came up in the context of the state port inlet management areas and whether there should be different standards on temporary erosion control structures in these areas. The Division has looked at research on performance of geotextile tubes in other areas and for this effort, reached out to other coastal states regarding their experiences with these tubes. We received nine responses to this request. The responses indicated that other states allow them on the oceanfront or lakefront beaches, but the results were mixed. New Jersey and Puerto Rico had the best success with them, while others states responded that they had not performed well in high energy environments. The bags tend to be exposed to a lot of damage and there were reports of failures. When these bags become damaged they are difficult to repair. Johnny Martin, Moffatt & Nichol, concurred and stated that his firm has found that these tubes do better in a low energy environment, and the smaller bags are easier to repair if they fail. The only benefit to using the large tubes is a slight economic savings because there is less material. Spencer Rogers stated the Science Panel has advised the CRC that size limits for temporary protection is the most critical factor in enforcing the temporary nature of sandbags.

### **Proposed Amendments to Sandbag Rules (CRC 16-23)**

#### **Mike Lopazanski**

Mike Lopazanski stated last year the Legislature directed the CRC to amend the sandbag rules to incorporate certain provisions. We were to allow sandbags even when there is no imminently threatened structures as long as the sandbags are adjacent to an existing property with sandbags, to allow continuous sandbag structures from one property line to the other, to make all the termination dates for permits for continuous sandbag structures the same termination date based on the placement of the last bag, and to allow the replacement/repair/modification of damaged sandbag structures at were legally placed with a current or an expired permit provided that the permit is being litigated. The CRC was directed to adopt these provisions as temporary rules. This Act was enacted on September 18, 2015. The CRC met the following week and immediately discussed the provisions and how to incorporate them into the rule language. We discussed the concerns the staff and Commission had and the CRC directed staff to try to incorporate these provisions into the rules and to develop the temporary amendments. These amendments were brought back to the Commission at the November 2015 meeting where they were approved for public hearing. The public comment period ran through the month of December and a public hearing was held on December 10, 2015. The temporary rules and public comments received were brought before the

Commission at the next meeting in February 2016 with a proposed effective date of February 26, 2016. The rules were sent to the Rules Review Commission (RRC) and they interpreted the stipulation in the legislation that the rules were to be adopted by December 31, 2015 as an expiration of the CRC's authority to adopt temporary rules. Commission Counsel Mary Lucasse made a case to the RRC that the Commission meet the APA requirements for temporary rulemaking and that given the timing of the passing of the Act and scheduled CRC meetings it was difficult to meet the December 31st deadline. The RRC was not persuaded and denied the adoption of the temporary rules. At this meeting we will need to look at the temporary amendments as well as the other provisions that the CRAC and CRC have been working on. One of the concerns about the legislative provision of allowing sandbags on lots with no imminently threatened structure is that it could allow the sandbags to interfere with public trust and public use of the dry sand beach. Staff therefore added language that required that the sandbag structure be no further oceanward than the landward most bags of the adjacent structure. The legislature directed the CRC to allow the placement of sandbags from one lot line to another. To address this, the stipulation that the bags extend no further than 20 feet from either side of the threatened structure was removed. Currently, threatened structures are allowed to be incrementally protected by sandbags as parts of the structure or the associated septic system become threatened and the expiration of the later permit is tied to the placement of the first sandbag. The directive of the legislature now ties the expiration date to the placement of the last sandbags if it is incrementally protected. The final provision from the legislature was to allow the replacement, repair or modification of damaged bags if they are being litigated by the property owner. We added a caveat that it was allowable within the originally permitted dimensions and that the litigation must be filed in state, federal or administrative court. Outside of the legislatively directed provisions, the CRC and CRAC have been discussing several other changes to the sandbag rules including appropriate time limits, removal criteria, covered and vegetated requirements, provisions for beach nourishment, and the once per property provision. Staff has looked at the time limits and recommended removing the distinction for large and small structures and set the time limit at five years which is the maximum allowed under the current rules if you were not undertaking mitigative action such as beach nourishment or inlet relocation or stabilization. During the CRAC meeting there was discussion about allowing eight years regardless of structure size. For removal it was determined that we should just be concerned about the bags above grade. Language has been added to the rules to require that only exposed sandbags above grade be removed at the expiration of the permit, but retained the provision for the removal of all sandbags if the structure is demolished. The language was also modified for when sandbags are considered no longer necessary and will require removal of the sandbags exposed above grade upon completion of the beach nourishment or inlet relocation or stabilization project. The CRAC recommended an eight-year time limit for all bags. The eight-year time frame in the current rule was an incentive for communities to do something to address the erosion issue. Currently there is a one-time per property provision to address the intent that sandbags are a temporary protection measure. If a structure becomes threatened again, as long as a community is actively pursuing a project then another sandbag permit can be issued. Chairman Gorham asked why the one-time per property provision is necessary. Braxton Davis commented that staff has a firm position that there should be some provision in the rule that makes the sandbags temporary. Gwen Baker added that if we take out the one-time per property provision then we lose the incentive for a community to find a more permanent solution. The variance process is available to address the outliers.

**Frank Gorham made a motion to remove the one-time per property provision from the sandbag rules. Bill White seconded the motion. The motion passed with six votes in favor (Rhodes, White, Gibbs, Baldwin, Andrew, Gorham) and five opposed (Cahoon, Lewis, Norris, Snipes, Baker).**

Mike Lopazanski stated that the CRAC requested staff look at whether there had been a requirement that the bags be constructed from woven material. Mike stated there are no provisions for geotextile tubes included in the current amendments. Does the Commission want to include language allowing geotextile tubes? Frank Gorham stated there are two separate issues to consider with geotextile tubes; the sandbag rules and the State Port AEC.

**John Snipes made a motion to not change the size limits on sandbags and not allow geotextile tubes as a temporary erosion control structure. Gwen Baker seconded the motion. The motion passed with nine votes in favor (Rhodes, Gibbs, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker) and two opposed (White, Baldwin).**

**Frank Gorham made a motion to reconsider the motion to remove the one-time per property provision from the sandbag rule language and to request the Staff bring back the additional rule language for further consideration in July. Bill White seconded the motion. This motion passed unanimously (Rhodes, White, Gibbs, Baldwin, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker).**

**Renee Cahoon made a motion to approve the temporary erosion control structure amendments in 15A NCACA 07H .0308, 07H .1704, and .07H .1705 as presented by staff for public hearing. John Snipes seconded the motion. The motion passed unanimously (Rhodes, White, Gibbs, Baldwin, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker).**

#### **PUBLIC INPUT AND COMMENT**

No public comments were received.

#### **BEACH MANAGEMENT**

##### **Beneficial Use/Generic MOU Study Group Update**

###### **Rudi Rudolph**

Greg "Rudi" Rudolph, Carteret County Shore Protection Manager, stated Justin McCorcle is temporarily leaving the Wilmington District and has accepted a temporary detail in with the Middle East District in Virginia. The working group met with the Port Authority, and with some changes in the Appropriations Bill last year, the Authority was directed to do a long-term memorandum of agreement with the Corps. That will help us with sand management at deep draft inlets.

##### **Update on State Ports Inlet Management AEC Development (CRC 16-25)**

###### **Heather Coats**

Heather Coats stated this has been on hold awaiting changes to the sandbag rules. House Bill 819 passed in 2012 directed the Coastal Resources Commission to study the feasibility of creating a new AEC for the lands adjacent to the Cape Fear River. The final recommendation of that study was to roll it into a more comprehensive study of all of the inlets. The final recommendation from the inlet management study was to recognize that both of the State's deep draft inlets exert a unique influence on the lands adjacent due to the federally maintained shipping channel. This began the development of the State Ports Inlet Management Area of Environmental Concern (AEC). We met with the local governments in the development of this AEC and they focused on two objectives that they hoped to see implemented within the use standards. The first was beneficial use of dredged material and rule language was drafted requiring all beach compatible sand to be placed on the adjacent beaches or nearshore areas. We heard from the Corps objecting to this language, pointing

out unintended consequences that may result, as well as reduced flexibility. We also heard from NCDOT on behalf of the Ports also expressing some concerns about the language. The CRC has since struck that language from the draft rule as a working group has been established to work on an MOA on behalf of the local governments with the Corps. As the rules stand now, only imminently threatened primary structures, infrastructure and roads can be protected by sandbags. The definition of imminently threatened has been modified in the draft rule language to allow more flexibility in the use of sandbags by eliminating the individual sandbag size restrictions and allowing for the use of geotextile tubes. This would allow local governments to protect frontal and primary dunes. These draft rules allow sandbags to remain in place for eight years and they can remain if they are fully covered by sand and not interfering with the use of the public trust beach. Mike Lopazanski added that at a future meeting we will also need to settle the boundaries for the AEC.

### **Summary of Local Government Discussion of Development Line (CRC 16-26)**

#### **Ken Richardson**

Ken Richardson stated as of April 1, 2016 the static line exception and development line rules went into effect. Since then I have had the opportunity to talk to communities that are considering the development line and have had some very open and informal discussions. A lot of good questions have come up about how to map a development line compared to the static vegetation line exception option. As a reminder, oceanfront setbacks are measured from the first line of stable and natural vegetation with the erosion rate and the size of the structure determining the size of the setback. If there has been a large-scale beach fill project, setbacks are measured from the static vegetation line. The static vegetation line exception, which went into effect in 2009, requires a 30-year beach plan be submitted by the community and approved by the CRC which allows the community to measure setbacks from the first line of stable and natural vegetation rather than from the static line. The recent amendments to the static line exception allow communities to immediately request a static line exception after a completion of a large-scale beach fill project. There is also no longer a cap on the structure size, no portion of the structure can be more oceanward than the landward most structure, and structures greater than 5,000 square feet must meet the minimum setback of 120 feet rather than the larger graduated setbacks. With the development line in no case shall new development be cited seaward of the development line and in no case can the development line be created or established below mean high water. The setback distance is determined by both the size of the development and the long term erosion rate. The procedures follow a similar concept to the static line exception in that it comes to the CRC for review and approval, however once the development line is approved then the Commission cannot require a change of the development line. While the static vegetation line exception uses the adjacent neighbor to limit oceanward movement of structures, the development line requires each town to determine what will best meet their management objectives.

### **ACTION ITEMS**

#### **Adopt 15A NCAC 7H .0304 Ocean Erodible AEC- OEA Calculation**

Mike Lopazanski stated this amendment is a change in the calculation to the OEA. There was a public hearing scheduled for each of eight oceanfront counties. We had good attendance, but did not receive any comments about the amendments. Staff is recommending adoption of this amendment.

**Renee Cahoon made a motion to adopt 15A NCAC 07H .0304. Phil Norris seconded the motion. The motion passed unanimously (Rhodes, White, Gibbs, Baldwin, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker).**

**OLD/NEW BUSINESS**

Neal Andrew requested an update on the process involved with the final draft for the strategic plan for the Coastal Reserve and an update on the draft for the new management plan for the Coastal Reserve sites and asked when the Commission will have an opportunity to review the strategic plan and management plans. He stated that he is on the Masonboro Island Local Advisory Committee and the original timing was for these draft plans to be available for review in the fall of 2015. Rebecca Ellin stated the original timeline had been extended because of current workload issues. The review process begins with an initial review by NOAA. A draft is then forwarded to the Local Advisory Committees (LACs), the CRC, DEQ, and when these reviews are complete, the draft document is return to NOAA for further review. At that point, the document will then be considered the final draft and will go out for a thirty-day public comment period listed in the Federal Register. There have been a number of new requirements that have been incorporated into the guidance that we have to address and there have a been a number of big projects taking longer than we anticipated that have caused some delays. NOAA's first internal review should be done this summer and the plan should go to the LACs in the fall. The LACs and the CRC have already weighed in on the strategic plan which is a portion of the management plan. Next the CRC will see the full management plan.

Braxton Davis stated that Michele Walker, Division Public Information Office, has been reassigned to the Division of Water Resources as their PIO. The Division and the Commission is appreciative of her work and wish her luck. Her counterpart at DWR, Sarah Young, will be coming to DCM.

**PUBLIC HEARINGS**

**15A NCAC 07H .1801, 07H .1802, 07H .1804, 07H .1805, 07H .2505 Beach Bulldozing GP**  
**15A NCAC 07H .2701, .7H .2704, .7H .2705 Marsh Sill GP**  
**15A NCAC 07H .0205 Coastal Wetlands**

DCM staff gave an overview of the rule amendments and fiscal analyses. No comments were received.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Wilkis, Recording Secretary