

**Implementation and Standards Committee**

**May 17, 2007**

**City Hotel & Bistro  
Greenville, NC**

**Bob Emory, Chair**

**Estuarine Shoreline Stabilization Draft Rule Language (I&S-07-10)**

Bonnie Bendell presented proposed general permit draft rule changes to estuarine shoreline stabilization general permits 15A NCAC 07H .1100, .1400, .2100 and .2400. The proposed rules address recommendations from the CHPP to provide alternatives to vertical structures for shoreline stabilization. The current proposal reduces the distance waterward in which bulkheads encroach into public trust areas, moves stabilization structures farther landward of marsh vegetation to allow for marsh migration, minimizes construction impacts, and promotes the use of rock structures.

Changes to the four general permits were discussed individually. Two different proposals for non-wetland shorelines were presented. First, staff recommended a decrease in new bulkhead alignments from an alignment that currently averages 2 feet with a maximum of 5 feet waterward of normal high water (NHW) or normal water level (NWL), to an alignment that would approximate the NHW or NWL. The second proposal would allow the structure to be permitted an average of 5 feet landward of the NHW/NWL. After much discussion, the Committee voted 16 to 1 in favor of the average alignment of 5 feet landward with a minimum of normal high water or normal water level. Staff will review the implications of such a change and report back at the next meeting.

On non-wetland shorelines when replacing a bulkhead, staff recommended to decrease bulkhead alignment from an average of 2 feet with a maximum of 5 feet waterward of NHW/NWL to a maximum distance of 2 feet waterward of NHW/NWL except when accommodating irregular shaped shorelines. The subcommittee voted unanimously to accept the recommendation with the addition of an exception to allow tying into adjacent stabilization structures.

On wetland shorelines, staff recommended to decrease the bulkhead alignment allowance from the landward edge of coastal wetland vegetation to 5 feet landward of the coastal wetland vegetation. The Committee had no objections but suggested including an exception when actually replacing structures.

Spencer Rogers mentioned that he would like to see the rule reflect correct engineering terminology instead of current terminology for some structures. Staff will present updated proposed rules with appropriate terminology options to the Committee at the July meeting.

**Marsh Vegetation Mowing/Cutting Draft Rule Language (I&S-07-11)**

Terry Moore presented the Committee with staff's efforts in moving forward with rule making to regulate the mowing, cutting, and burning of coastal wetlands. Initial thoughts including developing basic guidelines for categories of "development" that would be exempt from the CAMA Minor permit requirements. These guidelines would be similar to Best Management

Practices. These guidelines would exempt activities that are often habitat management tools of State and Federal agencies such as the North Carolina Wildlife Resources Commission and the US Fish and Wildlife Service. Further consideration would be given to the establishment of a *de minimis* threshold or incidental square footage.

Staff also proposed to develop use standards for the activities. This could include height of cutting, frequency of the activity, and window of occurrence for the activity. Proposal complying with these guidelines would not require a CAMA Minor Permit. Those not in compliance would require a Minor Permit and staff would consult with the appropriate State and Federal agencies for project specific comments. Melvin Shepherd then voiced concern about allowing any alteration of this productive habitat.

After some further comments, Wayland Sermons made a motion and Mr. Shepherd seconded it, that staff go forward with the draft rule making as proposed. The motion passed unanimously. Staff will attempt to get feedback/comments from the aforementioned agencies and report back to the Committee at that time.

### **Amendments to 7H .0208 General and Specific Use Standards (I&S-07-12)**

Mike Lopazanski continued the Committee's review of 7H .0208 necessitated by the Commission's review of rules for Dock and Piers in both the General Permit (07H .1200) and the Estuarine and Ocean System AEC Use Specific Standards (07H .0208(b)(6)). Mike reminded the Committee that since the Specific Use Standards are part of the much broader use standards for the AEC, the NC Administrative Procedures Act (APA) requires that the entire rule be subjected to the scrutiny of the Rules Review Commission. The Committee has been reviewing 07H .0208 to correct vague and/or ambiguous language in accordance with APA guidelines.

Mike advised that the additional changes now being considered are the result of a preliminary review of 07H .0208 by the Rules Review Commission staff. These changes represented further attempts to clarify specifics of the rule and to remove outdated provisions. Mike noted that even with the proposed changes, the complicated nature of 07H .0208 will require further consideration by DCM staff before it is ready for Committee approval. Of particular note in this version of the rule has been the reference to a new definition of SAV being considered by the Marine Fisheries Commission. Staff has been replacing "beds of submerged aquatic vegetation" with "submerged aquatic vegetation as defined by the Marine Fisheries Commission". This change is needed since the Marine Fisheries Commission is removing "beds" from their definition. Bob Wilson expressed concern with the inclusion of a reference to a definition that has yet to be determined. Mike Street provided some details of draft definition being considered by the Marine Fisheries Commission. Mr. Wilson expressed further concern with the broadness of the definition and its implication for CAMA permits, particularly dredging projects. Street explained that the definition being framed to include areas that were suitable for SAV growth and have had SAV in the past. After some discussion of the prevalence and increasing abundance of SAV in the state's coastal waters, the Committee directed staff to continue to move the draft changes forward.

### **Status of Marsh Islands Inventory (I&S-07-13)**

At the January CRC meeting, staff was tasked with developing a plan on how an inventory of privately owned islands in coastal North Carolina could be produced. This inventory could then

be used by the CRC to determine whether additional protection measures and/or rule initiatives are needed to ensure adequate environmental protection of these unique habitats. With this in mind, Doug Huggett presented a proposed plan for the Committee's consideration.

The proposed plan would involve a pilot program in one coastal county. Doug suggested either choosing Brunswick County or Carteret County. Carteret County was chosen. The next step of this proposed plan would be to determine potential islands through the use of existing GIS mapping. Potential islands identified by this GIS effort would then be validated by first using available aerial photography, then through on-site inspections, where necessary. Next, in order to determine a process for determining ownership (private versus public) of these islands, a coordination effort would need to be undertaken with staff from the State Attorney General's office, the State Property Office, and possibly the U.S. Army Corps of Engineers. It is envisioned that this would be the most labor-intensive and time-consuming step of the process, as it is likely that individual title searches may have to be done on each individual island.

Finally, staff would attempt to assign to each identified island a "development pressure rating" (i.e. currently developed, high, medium, low, none). This information would then be presented to the Committee. Based upon feedback received from the Committee, staff could refine its inventory procedures and proceed on with the inventory of the rest of the coastal zone if necessary.

After some discussion, the Committee approved this approach, but did ask that progress reports be provided to the Committee after each step.