



A Citizen's Guide to Coastal Water Resource Management



2005 UPDATE

Chapter One

Introduction

There was a time when Lena Ritter couldn't name the Onslow County commissioners. She did not attend public meetings, and she would not have dreamed of making a speech. Like the seven generations before her, Ritter was a fisherman. She knew the water and how to make a living from it.

But in December 1982, a newspaper article transformed Ritter from a fisherman to a citizen activist. The article revealed the development plans for Permuda Island - 383 condos, four tennis courts, two swimming pools, and a marina.

All of this was planned for a mile-long strip of land nestled in Stump Sound between Topsail Island and mainland Onslow County.

To Ritter, the development spelled trouble for the waters she and other local fishermen plied for their baskets of clams and oysters. She believed the rainwater and silt running off the development's roofs, roads, and parking lots would pollute the waters and the shellfish beds.

For Ritter, the proposed development jeopardized her livelihood and her heritage.

To voice her opposition, Ritter got a quick lesson in civic participation. She learned how to become involved in local and state government.

It's a lesson everyone should learn because the resources that make our coast special - the bays, sounds, marshes, and beaches - belong to everyone. They are public trust resources.

That's why it is important for the fisherman, the boater, and the developer to have a voice in how these resources are managed. But to have that voice, people must make the effort to become involved in coastal management. They must attend public hearings, write letters to state agencies, and call public officials.

To talk knowingly about the laws and regulations that govern our coastline, citizens should develop a fundamental understanding of how coastal management works.

This guidebook is designed to help citizens develop that understanding. It is based on the experiences of groups and individuals who have learned how to contribute to and improve our coastal management process.

Now more than ever, it is important for citizens to become involved. More people are using the state's coastal waters and living along its shores. This puts more pressure on the natural resources and creates more conflicts among the people using the resources.

But no one is entitled to use those resources to the exclusion of others. The commercial fisherman, swimmer, weekend angler, property owner, and developer all have rights that must be respected.

To balance all the uses and users, the government has laws, regulations, and state commissions. And the legislators who drafted the laws and established the commissions, included provisions for you and me to participate. These legislators understood that our involvement is vital if these laws are to work as intended.

They had several reasons for involving the public: to ensure that coastal managers have access to all relevant information, to make better laws, and to encourage citizens to halt violations of the law.

Although these avenues for public participation are well established, few people actually know how to use them. For instance, most folks don't realize that they can actually propose a regulation to the state. Or they don't know how to appeal a permit that allows some destructive aspect of development.

Lena Ritter knew nothing about these participatory processes. But she learned.

And what she learned helped she and other shellfishermen voice their opposition and eventually halt the proposed Permuda development. Her success was a victory for shellfishermen and a lesson in citizen participation.

But she says that understanding how to become involved and how to make a difference in managing our coastal resources is not easy. It takes hard work and determination.

Complex combinations of federal and state laws form the basis of the state's coastal management program. The most notable of these is the federal Clean Water Act enacted in 1972, the N.C. Coastal Area Management Act of 1974 (CAMA), and the N.C. Sedimentation and Pollution Control Act of 1973.

Four chapters in this guide explain the basic provisions of these laws. The final two chapters describe other regulatory and non-regulatory programs that apply in the coastal area. To begin the guide, we summarize the general concepts of regulatory programs and the basic principles of public participation.

Remember, the regulatory programs that protect our coastal resources are ever changing. As this edition was being produced, state and federal water quality regulations are being revised and possibly have been altered. This book is only a starting point. To stay current with regulations requires a personal commitment to the preservation and protection of our valuable coastal region. Individuals can make a difference.

We hope this guide helps you become involved. After all, public interest ensures that decisions affecting public resources - the beaches, the sounds, the marshes - are made on behalf of all the citizens of North Carolina.

Chapter Two

Taking the Initiative

When Lena Ritter began her challenge of Permuda Island's proposed development, she decided to write a letter to her local newspaper to air her concerns. But she soon discovered that writing a letter wasn't enough. She had to find other ways to affect development decisions.

During the next five years, Ritter and her fellow fishermen used every opportunity available to them to let local, state, and federal agencies know about their concerns. They found that many of the same opportunities for public involvement were available no matter what level of government or what agency was involved.

This chapter outlines the basic principles of regulatory programs and explains how to become effectively involved in managing coastal resources. These principles apply to specific regulatory programs described in later chapters.

The Regulatory Process

Regulatory programs that protect the environment begin when the U.S. Congress or N.C. General Assembly passes laws that establish the goals and mechanisms for resource conservation and management. The laws are usually implemented by government agencies that develop and adopt regulations with specific requirements for meeting the goals set in the laws.

In developing rules, agencies must interpret the laws enacted by the legislature. Often the laws are broad and interpretation is not easy. Try as they might, agencies cannot develop rules that specifically address every situation, particularly as people explore new methods of complying with regulations. Consequently, agencies must make decisions for situations not specifically described in laws and regulations. Strong public advocacy can be important in swaying these precedent-setting decisions.

If you believe an agency or commission has not properly defined the law, you may file a lawsuit. Then the courts will resolve the issue. Congress or the general assembly can change the laws if they find that agencies and the courts are misinterpreting them.

Commissions and Staffs

The state environmental agencies usually have a commission and a staff. For example, the Division of Water Quality (DWQ) is staff for the Environmental Management Commission (EMC); the Division of Coastal Management (DCM) is staff for the Coastal Resources Commission (CRC); and the Division of Land Resources (DLR) is staff for the Sedimentation Control Commission and the Mining Commission. The commissions have the authority to adopt regulations; the staffs conduct day-to-day work such as issuing permits in accordance with the regulations. Several divisions or staffs are combined into one department of state government. Most environmental programs discussed in this booklet are in the N.C. Department of Environment and Natural Resources (DENR).

The interaction between agencies with different authorities, priorities, and training is often a critical aspect of effective environmental management.

Rule-Making Process

Public participation in the adoption of regulations can be an important means of protecting the environment. The agency develops proposed regulations. These are presented to the public for comments in a rule-making public hearing. Written comments can also be submitted.

A public notice of the hearing and the text of the proposed regulation are published in the North Carolina Register (<http://www.oah.state.nc.us/rules/register/>) for state agencies and in the Federal Register (<http://www.gpoaccess.gov/fr/index.html>) for federal agencies. These documents are also available at most public libraries. Notices are sometimes published as legal

ads or notices in newspapers or mailed to persons who have requested to be notified of regulation changes for a particular agency. The notice tells how to get more information on the proposals.

A hearing officer from the commission or staff presides over the public hearing. The hearing officer works with the staff to review the public comments and to make a recommendation to the full commission. The full commission then makes the final decision.

Petition for Rule-Making

In North Carolina, anyone can request that a state agency adopt or change a regulation. The request is called a petition for rule making. The agency must respond to the petition within 120 days or at the next regularly scheduled meeting. The requested rule may pertain to any aspect of the regulatory program. It may be helpful to have an attorney prepare this request.

The agency has three choices in responding to the request. It may initiate rule making, deny the request, or defer the request to a later date if the person making the request agrees to the delay. Agencies often need more time to review an issue and agree on proposed regulations. Therefore, they establish a committee to work with the people who request a new regulation. The committee discusses the problem and agrees upon a proposed rule. The people who submit the petition are usually part of the committee and agree to the delay.

Permits

When someone wants to undertake a development activity that affects an environmentally sensitive area, he or she may be required to obtain a permit (specific permits will be described in later sections). The permit indicates that the agency, using the appropriate regulations, has found the activity environmentally sound. An application describing the proposed project is submitted to the agency, which may approve the plan, deny it, or approve it with additional conditions. The certificate of approval may be called a permit or an approved plan.

Table 1 shows agencies with permit authority for coastal environmental programs.

General Permits

A general permit is a means of quickly approving projects that meet previously determined criteria. The general permit is initially issued under the same process as an individual permit. However, once a general permit is issued, all projects that meet its criteria are automatically approved. General permits are often adopted as regulations.

General permits are applied to projects that are frequently undertaken, pose minimal threats to the environment, and are easily accomplished in compliance with the regulations. Some general permits do not require that the regulatory agencies be notified of a project's construction. There is never a lengthy application, review process, or public notice required for projects that are covered by general permits.

Permit Decisions

Agencies review applications and approved projects if they find that the plans comply with the laws and regulations.

Public review and comment on issuance of individual permits varies with different agencies and types of permits. **Table 1** summarizes public participation for the various environmental permits. Some permits, such as those for discharging sewage into surface water, require public notice of an application and a hearing if there is significant public interest. CAMA permits require public notice and an opportunity for written comments, but no public hearing. However, no public notice or written comment is provided for septic tank permits or erosion control plans.

If you believe a permit has been issued that does not comply with the regulations and the laws, it can be challenged by filing an appeal. The appeal may be either to the commission

responsible for the regulations or to a court of law, depending on the type of permit and circumstances of the case. In either situation, an attorney and expert witnesses are usually needed. A courtroom process ensues when witnesses are called and cross-examination occurs. Although this process is sometimes called a public hearing, it is really a contested case hearing. And it is different from the less formal town-meeting hearings discussed earlier.

Variances

Some environmental laws allow exceptions (variances) from the regulations on a case-by-case basis if the regulations cause extreme hardship in a particular situation, and the project has minimal environmental impact. Variances are only obtained after a special hearing process.

Enforcement

Agencies have the authority to punish violators of laws and regulations with civil penalties or fines. However, if the agency can prove the violation was willful or knowingly committed, criminal penalty fines or imprisonment may occur. Criminal sanctions are rarely used because the agency must prove beyond a reasonable doubt that the offender violated the law willfully. For civil penalties, the agency must only prove by the greater weight of the evidence that a violation occurred. Most environmental laws find each day of noncompliance a new violation. Therefore, penalties can rapidly accumulate.

Agencies also have authority to issue or obtain legal injunctions to stop violations and/or restore damage caused by violations. These orders can be enforced through the courts. To correct the problem, the agency and violator may enter into a special order by consent, or SOC, or a judicial order by consent, or JOC. This is a legal agreement and a timetable is established to correct the problem.

All three enforcement actions (civil penalties, criminal penalties, and legal orders) can take months or years to complete. A few offenders have decided that it is cheaper to violate environmental regulations and pay penalties than comply with the law. Large fines and strict enforcement of the laws are needed to make such tactics uneconomical.

Unfortunately, many agencies do not have adequate enforcement staff to perform frequent investigations and to follow up on violations. That's where you come in: observant citizens can play an important role in helping the agencies enforce the laws.

Local Government Authorities

Counties and towns may have zoning or subdivision requirements that affect the environment and natural resources. These requirements are implemented using building or subdivision permits and are based on ordinances adopted by local governments. To establish these ordinances, the localities use a process of public notices and hearings.

Local governments in the 20 coastal counties are required to adopt land-use plans to guide development. These plans can influence the protection of natural resources and are important means of public involvement. Land-use plans are discussed in the CAMA section.

Although this guidebook focuses on how citizens can work with state and federal agencies, many of the principles also apply to working with local governments.

Citizen Involvement in Regulatory Process

Awareness, action, persistence, and good, solid facts are key elements in influencing rule-making and permit decisions. Citizens can use the following hints to effectively communicate their concerns to environmental agencies.

Stay Informed

The most difficult aspect of public participation is staying informed about issues that concern you. Whether you are interested in just one issue or a broad range of issues, it is

important to stay abreast of the latest developments. There are a variety of ways to stay informed.

One of the best sources of information is the press. In addition to news stories, many environmental regulations require written public notice of permit applications. These are printed in the legal sections of newspapers near the classified ads. Reading the legal ads may not be exciting, but it is necessary to stay up-to-date on permit applications and rule changes. Be aware, however, that project changes that occur after the public notice is published are often not re-advertised.

Some agencies send out notices of meetings and permit actions or newsletters about their activities. These include publications such as the N.C. Environmental Bulletin (<http://www.doa.state.nc.us/doa/clearing/ebnet.htm>), which lists environmental impact statements and assessments currently under review by state agencies. **Appendix 1** contains mailing addresses for these notices and bulletins. Many publications and notices are free, but others, such as the North Carolina Register, require a substantial subscription fee. For publications that carry a fee, pool financial resources with other citizens who have similar concerns.

If there is an issue you are following closely, such as a permit application, you can obtain supplementary materials regarding the project from the permitting agency under the Freedom of Information Act. Often the agencies will require you to furnish them with a written request specifying the information you wish to obtain. Some regulatory agencies, such as the U.S. Army Corps of Engineers (Corps), have Freedom of Information Officers who can help you acquire the additional information. State agencies have public information officers who perform the same function.

There are many citizen groups that are actively involved in a variety of environmental issues. Many of these groups keep files on water quality issues or other specific concerns they are actively tracking. These groups are excellent resources. Don't be afraid to contact them for their help. **Appendix 2** is a mailing list of citizens' organizations that monitor, and participate in regulatory processes.

Frequent Contacts with Staffs

Another important source of information is agency staff members. Do not hesitate to ask them for information or let them know your concerns.

Agency staff has routine contact with permit applicants and become familiar with the applicants' perspectives. To help regulatory personnel evaluate permit decisions, citizens affected by the regulatory determination should initiate frequent contact with the staff.

Phone conversations and visits to the agency office can be learning experiences for both the agency and the concerned citizen. Public hearings and written comments do not allow for an exchange between agency personnel and concerned citizens. Informally providing information to the staff prior to the public comment process can be very effective. The sooner agencies receive information, the more easily they can use it.

Informal discussions with all levels of agency personnel are valuable. The technical staff often has important information to share. Or they may use your information to make recommendations to their supervisors on proposed rules or permit decisions. Also, talk with decision-making managers to make them aware of your concerns.

If phone bills are a problem and a lengthy long distance conversation with an agency person is required, you may request that your call be returned. Do not hesitate to leave your name and number with a request that your call be returned if the person you need to talk to is not available. Before making your call, plan what points you want to make or questions you want answered. Make your call as organized and as succinct as possible.

Understand Rules

Obtain copies of agency rules and talk to different people about the meaning of those rules. Pose the same questions to different staff members. They may have different interpretations of the rules or may be able to explain them better.

Making staff members aware of your interpretation of regulations can be an important part of public participation. Your viewpoint can help agencies interpret and apply regulations. The agencies will better understand the public's perspective, and in many cases, you can counterbalance the views of permit applicants.

To support your interpretation of a regulation, determine when the rule was adopted and look for information in the proceedings of that meeting. The preamble to the regulation in the Federal Register often explains its meaning. Likewise, the transcripts of public hearings or minutes of the commission meeting are sometimes kept at the agency. These transcripts can clarify the original intent of the rules.

Talk with Everybody

Call or meet with anybody who could have influence over an issue that concerns you. This includes local administrators, state officials, legislators, citizen groups, and the media. Get people aware of, and talking about, your concerns and ideas.

Public Hearings

Public hearings are one of the best and most efficient methods of letting regulatory agencies and potential supporters know your concerns. It takes support, knowledge, courage, and aggressiveness to effectively use the public hearing process.

Do your homework before the hearing. Find out everything you can about the topic of the hearing, including how the meeting will be run and the identity of the hearing officer. Inform other concerned citizens of the hearing date early to eliminate time conflicts. Remember to arrange transportation for those in your group who cannot drive.

You may need to coach some of your group members on how to present their concerns. People are often hesitant to speak publicly at hearings. They are concerned about their speaking ability, their lack of scientific knowledge, and the possibility their comments will not be taken seriously. But citizens should put their fears aside and let agencies know how they feel about environmental issues.

Do not discount your personal experiences. In many rulings, the decisive arguments were based on common sense or personal experience. Emphasize your observations about the area being discussed. For example, if you or your neighbors have noticed signs of poor water quality or a decline in fish stocks, present this information at the hearing.

At most public hearings, people sign up at the door to speak. They speak in the order of arrival. At the beginning of the hearing, the hearing officer is just forming an opinion; therefore, it is important to arrive early. It can be highly effective to have some people speak near the conclusion to counter points raised during the hearing. If you plan on speaking for more than three minutes, you will need to submit three copies of your comments to the hearing officer.

Reporters sometimes have difficulty understanding the points being addressed at a hearing if they have no advance knowledge of the issue. To ensure balanced media coverage, help reporters understand the issues prior to the hearing. It may be beneficial to hold a press conference before the hearing at the same location. Give reporters information about the issues so they will be prepared to interpret what they hear. The press conference may also assure television coverage. Otherwise, your views may be overlooked as the television reporter meets the deadline for the late night news.

Written Comments

Written comments can be submitted even if you cannot attend a public hearing. Speakers are often limited to three to five minutes at public hearings; consequently, the oral presentation

may be a summary of lengthy written comments. There is no limit to written comments.

Written comments are the only form of comment allowed for some permits. Other agency approvals do not require public comments. But don't let that stop you. Send a letter pointing out factors to consider when reviewing the project.

Content of Oral or Written Comments

Let the agency know what you think and why you think it. Again, personal observations or experiences are particularly valuable.

If possible, scientific or technical experts should review and comment on proposed regulations or permits. Agency technical staffs often do not have time to study all aspects of a proposed regulation or project. They may overlook important factors. Outside review by technical experts can identify problems. Before asking an expert to testify, consider his or her qualifications. Evaluate the person's area of expertise, reputation, personality, political influence, and ability to present the information. An arrogant expert may be worse than no expert. If you do not know such a person, other environmental organizations or citizen groups may have suggestions.

For the most effective strategy, combine strong public support from citizens with technical comments from experts. To demonstrate public support, solicit elected officials and lots of concerned citizens to testify. In some cases, it is also valuable for an attorney to present legal issues.

If you want to object to a permit for a proposed project, show that the project would violate specific laws or regulations. This guidebook summarizes some basic regulations and requirements, but regulations change frequently. Recent copies of the applicable regulations can be obtained from the agency issuing the permit. Talk to people who have had experience with the regulations to learn about its requirements.

The Press

Public exposure increases public involvement and is a powerful tool available to citizens. Communicate freely what you are doing and withhold nothing about your activities.

When talking to the press, make your strongest point first. Add qualifications later. Accurate, concise statements are most effective. Do not swamp a reporter with details. Organizations should determine which member communicates best with the media. Do not hesitate to let that person be your media spokesman. A technical expert may not be the best spokesman.

It is your responsibility to make sure that reporters understand the context of any statements you make. Providing background information on an issue will mean a better, more accurate news story. To help reporters, find copies of other news stories that accurately explain the issues.

North Carolina has many media outlets - newspapers, magazines, television, and radio. Effective media coverage means finding out who the reporter is that covers your community for each type of media. For example, television stations often require reporters to produce one or two news stories every day for the county they cover. Statewide newspapers have reporters that specialize in environmental issues. Local papers assign one or two reporters to cover all newsworthy events. Find out whom to contact. Soon, you will develop a working list of press contacts interested in your issues.

A reporter cannot be your ally. He or she has a professional duty to present both sides of an issue. If you want your views to be compelling to the public, present a strong case to the reporter. Remember that any of your statements are likely to be countered by your opponents. Consequently, identify the weaknesses of arguments that will be used against you.

Reporters love to get a good news tip, especially an exclusive. It makes their job easier. And it's a good way for you to reward a reporter who does a good job. But before you dial that

reporter's telephone number, remember that a good news tip has immediacy and is important. If the story is just interesting and has no time frame, send the reporter a letter.

Letters to the editor are also effective in bringing information and opinions to the attention of the public and newspaper editors. The letters are one of the most widely read sections of the newspaper. They can be submitted to support or oppose articles in the paper or to raise new issues. Be sure to provide your name, address, and telephone number on the letter.

Enforcement

Informing agencies about violations of environmental regulations is an important citizen contribution. Limited agency budgets and staff mean that enforcement of regulatory programs often hinges on citizen complaints. You can organize other watchdog efforts to monitor compliance of environmental laws. There are programs in which citizens monitor water quality in their local area. These are listed in chapter eight.

Before you report the suspected violation, determine the extent of the work and the type of land where it is occurring. Then call the appropriate agency immediately if you observe a project that violates regulations. The list of agency offices and phone numbers is given in **Appendix 4**. When you make your call, obtain the following information:

- **The name of the staff person** who reviews projects in the county of the observed violation. Request to speak to that person. If the staff person is not in, speak to his or her supervisor. If the supervisor is not available, ask to speak to the manager at the next higher level.
- **The status of the project.** Determine whether the project has been reviewed by the agency and has a permit. Find out exactly what was approved if a permit was issued. You may want a copy of the permit.
- **The results of any investigation conducted by the agency** as a response to your call.

Follow up any telephone call reporting a violation with a letter. In addition, copies of all correspondence should be sent to other coastal regulatory agencies (listed in **Appendices 3 and 4**). They may also want to investigate the case.

In some cases, the agency will respond swiftly to violation reports. Other times, persistent efforts may be necessary. Several phone calls to different people may be needed. The staff person who makes inspections may be busy with work ordered by his supervisor. If necessary, contact the supervisor to adjust staff priorities. To make headway, you may need to talk with several levels of supervisors.

Chapter Three

Water Quality Standards

Citizens can take an active role in the protection of coastal waters. For example, a part-time oysterman became the plaintiff in a lawsuit through his knowledge of water quality regulations.

Storm water runoff can cause shellfish contamination and is often linked to development around shellfish beds. The shellfisherman contested the issuance of a permit to allow construction of a marina in an area he used for oystering. He argued that the Clean Water Act does not allow projects that will pollute waters that are used for shell fishing. His case had merit, and he won the support of the EPA.

Congress enacted the federal Clean Water Act in 1972 to establish uniform national standards to restore and maintain the chemical, physical, and biological integrity of our nation's waters. It contains provisions that address the pollution of shell fishing waters as well as other water quality issues.

Key Provisions of The Clean Water Act

Protecting existing uses of public waters is one of the most powerful provisions of the Clean Water Act. Congress recognized that we must stop polluting our water if we are to prevent degradation of its uses. Even the loss of potential economic profits from development does not outweigh the public's right to use the water.

Existing Uses

To limit pollution, the Clean Water Act requires that existing uses of the waters be maintained. In other words, waters may not be polluted to the point that they no longer support their uses such as swimming, shell fishing, and fish propagation. A use is "existing" if it has been available since November 1975 when the regulation was adopted by the EPA. Pollution disposal is not a protected use for waters.

Water Quality Classifications

The state water quality classification of a water body specifies the uses to be protected. Saltwater classifications for North Carolina's coastal areas are SA, SB, and SC. Freshwater classifications (B, C, and WS) apply to inland waters. For example, the SA classification is for shell fishing waters. SB and B classifications are for organized or frequently used swimming waters. Each classification also specifies the maximum concentrations of various pollutants that will be allowed. Every creek, river, stream, estuary, section of the ocean, or other segment of water in the state has been assigned a water quality classification and corresponding standards.

A basic use of all waters is the propagation and maintenance of aquatic life, including plants and animals. The antidegradation regulation requires that existing uses be protected even if the uses or threatening pollutants are not specifically mentioned in the classification and standards. For example, scallops grow in submerged grass beds that are not specifically mentioned in any of the classifications. However, any pollution that would kill the grass beds violates the antidegradation requirement because it eliminates the water's use for scalloping.

A water quality classification cannot be downgraded if the change would eliminate an existing use. And it cannot be downgraded if the existing use can be regained with reasonable cost. Only after a use attainability study has shown that pollution is irreversible, or the area is not suitable for the classified use, can a water classification be downgraded.

Class SA Waters. Waters classified SA are protected for market purpose shell fishing and have stringent bacteriological standards. Disease causing bacteria and viruses are concentrated in clams and oysters as the filter food from the water. Since shellfish can be eaten raw, the water must be free of disease-carrying pollutants. Therefore, in order to protect public

health, sewage discharges into SA waters are prohibited.

Storm water runoff and drainage from urban areas contain high levels of pollutants, including fecal coliform bacteria. The number of fecal coliform bacteria, an indicator of harmful bacteria and viruses, must be low for SA waters, a median of 14 MPN per 100 milliliters of the sample water with no more than 10 percent of the sample of 43 MPN. MPN refers to a counting technique used by the Shellfish Sanitation Branch to estimate fecal coliform densities. Special requirements for controlling runoff from new development are necessary to meet this standard.

The Shellfish Sanitation Branch of the Division of Environmental Health is responsible for monitoring shell fishing waters. Waters that exceed the fecal coliform standard, or are adjacent to a known threat of pollution, are closed to shell fishing by the state. To protect existing shell fishing waters, sources of pollution that cause closure of waters must not be allowed.

Class SB Waters. The saltwater classification SB designates waters used for organized or frequent swimming, skiing, and fish propagation. To propagate fish, the water quality must support habitat for reproduction of pollution-sensitive native species.

A SB classification requires that waste treatment plants have backup equipment to ensure that no untreated sewage flows into the waters. The backup provisions must include standby power and two parallel treatment units. The fecal coliform standard is less stringent for SB waters than for SA waters.

Class SC Waters. The saltwater classification SC designates waters used for fish propagation and incidental swimming. The waters are safe for swimming but have a higher risk of pollution and human illness than SB waters. Treated sewage may be discharged into SC waters if it will not impair the uses of the SC waters or any downstream SA or SB waters.

Freshwater Classifications. In addition to the saltwater classifications, several classifications apply to freshwater. The B and C classifications are the freshwater counterparts to the SB and SC classifications. The WS-I, WS-II, WS-III, and WS-IV classifications designate drinking water and differ as to the amount of protection and treatment needed for the water. All numerical water standards are the same for WS-I, II, and III.

Outstanding Resource Waters. The ORW designation may be applied in addition to the basic classification and provides additional protection for exceptional waters. The ORW classification is meant to protect waters without significant pollution sources and is not intended to clean up pollution problems. The specific standards for ORW classification are developed on a case-by-case basis for each water body given the designation, and the minimum standards are established by 15A NCAC 2B.021G. The ORW classification has been adopted in North Carolina to implement federal requirements that some exceptionally valuable waters be protected even if limited pollution would not violate the water quality standards. ORW's are the most valuable waters in our coastal region and must be protected by law.

Nutrient Sensitive Waters. The NSW designation may be applied in addition to the basic classification and provides limits for nutrient discharge. The specific limits are determined for each body of water.

High Quality Waters. The HQW designation is applied to streams that are rated excellent based on biological and physical/chemical characteristics. This designation includes all SA waters and primary and functional nursery areas.

Water Quality Classification Regulations

The Environmental Management Commission determines water quality classifications and standards. The classifications and standards are regulations and must have a public hearing to be changed. The state system for adopting and maintaining classifications and standards must comply with federal regulations. The EPA must approve every change in classification or standards for North Carolina.

In addition, the EMC has authority to fine anyone who violates water quality standards even if the activity causing the pollution does not require a permit. However, this authority is

seldom used when a permit is not involved.

The staff of the Division of Environmental Management, or DWQ, issues permits, sets fines, and provides enforcement.

Permits issued by DWQ and other state agencies must comply with water quality standards, including the antidegradation regulation. This requirement applies to permits for wastewater treatment plants, for discharge of dredge-and-fill material, and for development permits from the Division of Coastal Management, or DCM. In addition, state law dictates all permit decision made by the DWQ must require that the practical waste treatment and disposal alternatives with the least adverse impacts on the environment be utilized.

Hints on Public Participation

The Clean Water Act contains one of the strongest requirements for public participation in the federal statute book. According to Section 101(e):

“Public participation in the development, revision and enforcement of any regulation, standard, effluent limitation, plan or program established by the administrator [of EPA] or any state under this act shall be provided for, encouraged and assisted by the administrator and the states. The administrator, in cooperation with the states, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.”

Because of this provision, the public can participate in rule-making proceedings and permit reviews conducted to enforce water quality standards.

Information on Classifications

DWQ staff can tell you what the classification and standards are for a particular area of water. Contact the regional office nearest the site for this information. But the central office in Raleigh can also provide the information. The telephone numbers and addresses for these offices are given in **Appendix 4**.

Classification Requests

Any citizen can request that a water classification be changed. For example, you can ask for additional protection for exceptional waters used for shell fishing, fishing, fish propagation, or swimming under the ORW classification. Or, SC waters may be changed to SB if they are used, or will be used more often for swimming. The reclassification request or rule-making petition should state what the uses of the water are and where the boundaries of the classification should be. For ORW, suggest what additional pollution control measures are needed. In addition, unique site-specific standards can be requested for any water body, whatever the classification.

If the commission agrees that the waters are suitable candidates for reclassification, a public hearing will be held. Strong public support for the reclassification can be important if there is local opposition.

Triennial Review

The Clean Water Act requires that classifications and standards be reviewed every three years. During this triennial review, citizens can strengthen weak standards and update classifications. Formal and informal meetings are held to develop the proposed revisions, and then public hearings are held. A triennial review will be performed in 1992. Review information can be obtained from DWQ.

Permit Reviews

You should participate in decisions about water quality permits and in their enforcement. It is important for the protection of water quality standards and uses.

Case Studies

Protecting Existing Uses

A developer proposed to construct a marina by dredging high ground next to SA waters. The adjacent waters were open to, and used for, shell fishing. Shellfish sanitation authorities said the marina would close waters to shell fishing because of the likely sewage discharges from docked boats. Shellfishermen who used the area objected to the proposed project.

The developer and his attorney argued that they were restricting the marina's size by limiting the basin to high ground. They pointed out that by minimizing the impacts on the public resources, they were reducing their profits. They asserted the project would boost the economy and provide more tax base and jobs than shell fishing. In their view, the possibility of occasional sewage discharges and the subsequent closure of waters to shell fishing should not be considered a water quality violation. On most days the water quality should meet the standards, and it was unreasonable to penalize them for occasional discharges they had no control over, they argued.

The Clean Water Act has determined that long-term water quality is more important than immediate economic benefits. Because the waters had an existing use for shell fishing, the threat of pollution from the marina would make the waters unsuitable for shell fishing and would violate the antidegradation regulation. Therefore, the permit for the marina was denied.

This case demonstrates the importance of the antidegradation requirement to protect existing uses.

Bradley Creek Reclassification

Developers requested that Bradley Creek near Wrightsville Beach be reclassified from SA to SC to eliminate the restrictions that protect shell fishing. The land around the creek is densely developed. Consequently, bacterial pollution from marinas, stormwater runoff, and failing septic systems flow into the creek. Because of this pollution, Bradley Creek had been closed to shell fishing before 1975.

A use attainability study found a large oyster resource in the creek but concluded the waters could not reasonably be cleaned up for shell fishing. Pollution from septic tanks could be eliminated with a central sewage system, but pollution from the marinas and stormwater made the creek irretrievably lost to shell fishing.

At the reclassification public hearing, many Bradley Creek residents opposed the downgrade. They thought that cleaning up the waters from shell fishing should remain a goal - particularly since a new sewage system would reduce septic tank problems. Residents were concerned the downgrade would allow discharges from sewage treatment systems and increase storm water discharges to the creek. Other residents wanted the creek classified SB for dimming.

The EMC decided to downgrade the water from SA to SC. To protect nearby SA waters, they stipulated that no discharges from sewage treatment plants would be allowed. The SB classification was not assigned because the creek was considered unsuitable for swimming due to shallowness and oyster rock.

In this case, the use attainability analysis was the key to determining what uses were protected for a body of water. The case shows the importance of preventing pollution rather than attempting to clean up problems after they occur. Once an area is polluted, the cleanup may be so expensive that the water is, for all intents and purposes, lost to traditional uses.

References

1. The Clean Water Act, enacted as the Federal Water Pollution Control Act of 1972, is found at 33 USC 1251, et seq. Section 303 pertains to water quality standards. See <http://www.epa.gov/region5/water/cwa.htm> for more information on this landmark law.
2. Federal regulations on water quality classifications and standards are found at 40 CFR, Part 131. (Note: the federal regulations use the term standards to refer to classifications and standards in the North Carolina regulations.) The provisions for antidegradation and protecting existing uses are found at 40 CFR 131.12. Background on the federal antidegradation policy can be found in Environmental Law: Air and Water, Volume 2, 1986, by William Rodgers, West Publishing Co., pages 262-266.
3. State law on water quality classifications and standards is NCGS 214.1 and 214.3. State regulations on water quality standards are found at 15A NCAC 2B .0100, .0200, and .0300. See the Division of Water Quality's "Red Book" at <http://h2o.enr.state.nc.us/admin/rules/documents/rb080104.pdf>. The actual list of classifications for all the waters of the state is kept in a Schedule of Classification, which is organized by river basin and is not listed in the regulations. The schedule can be found <http://h2o.enr.state.nc.us/bims/Reports/reportsWB.html>.
4. The state antidegradation statement is at 15A NCAC 2B. 0201. See <http://h2o.enr.state.nc.us/admin/rules/>.
5. The requirements for backup systems for treatment plants are given in 15A NCAC 2H .0124 and .0129.
6. State law on procedures for petitioning the EMC (or any other state agency) to change classification of a section of water or to change or adopt any other regulation are given at NCGS 150B-16. See the website listed in Number 4 above.
7. Evaluation of State Environmental Management and Resource Protection Programs in the A/P Region by Robert C. Nichols, formerly the Research Triangle Institute. Albemarle-Pamlico Study Project 90-02. The Report can be obtained from the A/P Study, P.O. Box 27687, Raleigh, NC 27611-7687.

Chapter Four

Coastal Area Management Act

Recognizing the potentially destructive impact of development on irreplaceable coastal resources, the U.S. Congress enacted the Coastal Zone Management Act in 1972. The act encourages the establishment of a comprehensive coastal management program that balances wise development against protection of coastal resources. Under the act, states develop coastal management programs that meet federal requirements in exchange for federal funding and a say over federal actions affecting their coasts.

The North Carolina Coastal Area Management Act or CAMA, enacted in 1974, establishes a federally approved coastal management program for 20 coastal counties. The counties that are regulated through CAMA are shown in **Appendix 5**.

The basic premise of the act is to establish a comprehensive regional resource management program through local land use planning and designation of Areas of Environmental Concern (AEC). AECs include coastal resources of statewide importance. The CAMA program is now considered an essential means of balancing preservation of public resources with economic growth.

Division of Coastal Management within the Department of Environment and Natural Resources (DENR) administers CAMA. DCM's main office is in Morehead City with district offices in Elizabeth City, Washington, and Wilmington. DCM is responsible for a wide variety of activities, including the permitting of coastal development, the planning and management of coastal resources, and the implementation of other coastal resource programs.

Key Provisions

It is the intent of CAMA to preserve and manage the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard their biological, economic, and esthetic values. CAMA also establishes goals of protecting public water supplies, allocating the use of public trust waters, and providing public access to coastal and estuarine beaches. These goals are implemented by a combined effort of state and local governments.

Areas of Environmental Concern

AECs, as designated by the Coastal Resources Commission (CRC), are sensitive and valuable areas that require special protection. CAMA requires that a permit be obtained for development in AECs. Designated AECs include:

Estuarine waters and public trust areas: all waters of the sounds, estuaries, and oceans under North Carolina jurisdiction, or all waters from the inland freshwater-saltwater boundary to three miles offshore.

Estuarine shoreline: a 75-foot band of shoreline (from mean high water) along estuarine waters, excluding oceanfront beaches. The estuarine shoreline AEC expands to a 575-foot band of shoreline when adjacent to waters classified as ORW.

Coastal wetlands: salt marshes or other marshes subject to tidal flooding and normal wind tides. (Note: that use of the term wetlands under CAMA is narrower than for the Clean Water Act.)

Ocean hazard areas: ocean beaches, areas near inlets, and areas behind the dunes (the size of the area behind the dunes depends on the erosion rates and flood potential at the site).

Public water supplies: small water-supply watersheds and public groundwater well fields.

Natural and cultural resource areas: regions containing endangered species, natural habitats of scientific or educational value, or sites of unique geological, historical, or archaeological value. These are designated on a case-by-case basis.

Permits

A permit is required before development can begin in AECs. CAMA considers development to be any construction or any activity that disturbs land or water. Specifically, development is defined as:

“Any activity in a duly designated area of environmental concern . . . involving, requiring or consisting of construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or mineral; bulkheading; driving pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake or canal.”

The definition specifically excludes:

Agricultural or forestry activities unless they include excavation or filling that affects estuarine or navigable waters, and agricultural or forestry drainage ditches less than, or equal to, 6 feet wide by 4 feet deep.

- Maintenance of existing public roads, railroads or utilities within existing right of ways.
- Construction of facilities for the development, generation, or transmission of energy if the facility is regulated by other laws or the N.C. Utilities Commission.
- Emergency maintenance or repairs if life or property is in serious, imminent danger.

A permit is required for a project even if only a part of the project is in an AEC.

Major, Minor and General Permits

Projects that are larger than 20 acres have a structure that covers more than 60,000 square feet or require approval from another state or federal agency's approval must have a major development permit from DCM. Other projects under CAMA's jurisdiction must have a minor development permit issued by local governments under a program administered by DCM or a general permit. DCM issues general permits routine major development activities that have predictable effects on coastal resources. These include bulkheads, piers, boathouses, boat ramps, wooden groins, maintenance dredging, utility line installation, and emergency work.

State Dredge-and-Fill Permits

In addition to CAMA permits, DCM also issues permits for any excavation or filling in estuarine waters, tidelands, marshlands, or state-owned lakes. Projects that need these state dredge-and-fill permits usually require a CAMA permit. In fact, dredge-and-fill and CAMA permits have the same processing procedure and use the same permit form. There is no need to distinguish between these permits for a general understanding of the regulatory process.

Development Guidelines

Projects requiring CAMA permits must comply with development guidelines as established by the Coastal Resources Commission. Some guidelines set specific, quantitative standards; others provide general design goals. Some guidelines apply to all AECs; others apply only to specific AECs.

CAMA guidelines that regulate development may change over time; therefore, an understanding of current guidelines is important. If you want to review proposed development in an AEC, contact DCM personnel in Raleigh or at one of the field offices listed in the back of the book in **Appendix 4**. Additionally, DCM publishes handbooks that describe permitting procedures for development in coastal areas.

Examples of applicable requirements are:

- Development in AECs must not violate water quality standards or any other laws and regulations of the state. Likewise, no development will be allowed in an AEC that would cause waters with an existing use for shell fishing to be closed to that activity.
- Proposed development cannot contribute to cumulative effects that would result in unacceptable degradation of coastal resources. Cumulative impacts are defined as impacts attributable to the collective effects of a number of projects. Impacts include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.
- Only water-dependent uses will be permitted in estuarine waters and salt marshes. Water-dependant projects include navigation channels, boat docks, bridges, etc. Projects such as restaurants, homes, factories, and parking lots should be placed on upland sites where they will not damage public resources.
- Development must not interfere with navigation or with citizens' rights to gain access or to use public waters and resources.
- Development in AECs must not cause major or irreversible damage to valuable historic or archaeological resources.
- Sediment controls must be implemented during construction. Bulkheads for shoreline erosion control should be at or above the mean high water line, landward of marsh areas, and backfilled with soil from an approved upland source. Although not mandated in the regulations, DCM encourages the use of sloping shorelines stabilized with vegetation, riprap, or gabions rather than bulkheads. The sloping shorelines are less damaging to the environment and may be more effective, more economical, and longer lasting than vertical bulkheads.
- In any case, considering engineering requirements and all economic costs, there is a practical alternative that would accomplish the overall project purpose with less adverse impact on the public resource.

Guidelines for Marinas, Boat Basins and Canals

Key CAMA guidelines for construction of marinas and navigation canals include:

- Marinas that require dredging shall not be located in primary nursery areas or in areas that would require dredging through primary nursery areas.
- Marinas shall not be located in areas where shellfish harvesting is an existing use or near areas where shell fishing would be closed as a result of the marina.
- Marinas can be located in non-wetland areas or in deep waters (not requiring dredging).

However, they cannot disturb submerged aquatic vegetation and wetland habitats, except to access high-ground sites.

- Navigation channels, canals, and boat basins must avoid primary nursery areas, productive shellfish beds, submerged aquatic vegetation, or significant areas of salt marsh.
- Finger-fill canals may not be constructed. Canals should be straight or meandering with no right angles.

Guidelines for Drainage Ditches

Drainage ditches less than or equal to 6 feet wide by 4 feet deep and used for agriculture or forestry do not need a CAMA permit. However, ditches used to drain land for other uses, such as residential development, do need approval.

Drainage ditches that require a CAMA permit cannot adversely affect primary nursery areas, productive shellfish beds, submerged grass beds, or other important estuarine habitat.

Variances

An applicant for a CAMA permit may petition the Coastal Resources Commission for a variance to undertake a project that is otherwise prohibited by current development guidelines. If approved, a project is not required to fully comply with the regulations. Applying for the variance implies that the applicant recognizes the standards for development, but is requesting special flexibility because: (a) the regulations would cause “practical difficulties or unnecessary hardships as a result of application of the regulations,” (b) the project has unique site conditions that could not be anticipated when the regulations were adopted, and (c) the proposed project is consistent with the spirit, intent and purpose of the regulations.

Stormwater Control

Projects needing a CAMA permit must comply with storm water regulations adopted by the EMC. These regulations require use of storm water control devices unless the density of development is less than a specified level. The criteria are different for sites draining to SA waters than for sites draining to other waters. For projects within 575 feet of waters classified as ORWs, the built upon area of the project cannot exceed 25 percent of the total area. Small projects and those on sites that could not threaten water quality standards are exempt from the storm water requirements.

Any project that requires a sediment and erosion control plan (described in Chapter 6) within the 20 coastal counties must also comply with the storm water requirements, even if a CAMA permit is not needed.

Land-Use Plans

CAMA requires that each county develop and adopt a land-use plan. The plans must be consistent with the development guidelines and policies of the CRC. The initial plans and the Commission and the federal government must approve all changes. Municipalities can prepare their own plan or comply with the county plan. About 55 municipalities have adopted plans.

CAMA permits are denied for projects that are inconsistent with land-use plans. Likewise, federal permits and projects must be consistent with the plans and CAMA regulations. Also, local ordinances applying to an AEC must be consistent with the approved land-use plans.

In accordance with CAMA, local governments should be consistent with approved land-use plans outside AECs, even though they are not bound by the plans in those areas. CAMA states:

“All local ordinances and other local regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the commission for consistency with the applicable county and city

land-use plans and, if the commission finds any such ordinance or regulations to be inconsistent with the applicable land-use plan, it shall transmit recommendations for modification to the adopting local government.”

Contents of Land-Use Plans

The land-use plan must contain three sections: a summary of data about the existing conditions, resources and constraints in the area; policies for managing the resources, and development in the area; and a land-use classification map to guide development.

Land-Use Classifications

The land classification system includes five classes that may be subdivided. All lands within the jurisdiction of the local government must be given an appropriate classification. The five classes are:

Developed: intensely developed urban areas with public services such as sewer and water

Transition: future urban areas where services such as sewer and water are or will be provided

Community: clustered, mixed use, and low-density areas. Services such as sewer and water are not provided with the intent of stimulating intense development.

Rural: areas for agriculture, forestry, mineral extraction and other low density, dispersed residential uses without central services like sewers.

Conservation: areas needing effective long-term management and protection with no or very limited development.

Hints on Public Participation

Notice of Permit Applications

Notice of each CAMA permit application is published in the legal notices of the local newspaper in the county of the project. Care must be taken to review these notices since they are easy to miss and may not indicate all potential impacts of the project. Often a proposed project will first be made public through news articles or through requests to the local government for zoning changes or building permits.

Notice of a permit application must be posted at the project site; however, these notices are often not conspicuous and may be hard to read due to weathering. All waterfront property owners adjacent to the proposed project must be notified of the project by certified mail by the applicant. Landowners not adjacent to the project are not required to be directly notified.

CAMA requires that notice of each permit application be mailed to any citizen or group that requests to be notified. DCM will mail a monthly report listing all major and general permit applications being processed and their status, as well as a listing of all permits issued during the previous month.

For each application or permit, the report lists the county and location of the project, the applicant's name, a two-word description (e.g., subdivision/marina, ditch/road), and the federal consistency determination. Since the report is issued monthly, the review process may be almost

complete when a citizen obtains the information, evaluates it, and prepares written comments. The monthly report can be ordered from DCM in Raleigh at no charge (address in **Appendix 1**). There is no comparable listing of CAMA minor permit applications.

To participate in the development decisions in your area, have frequent conversations with agency staffs. Persons applying for permits are encouraged to speak with the DCM staff before submitting their application. Therefore, DCM and DWQ regional staffs are aware of most projects before permit applications are received. It is important for you to notify DCM staff of your concerns regarding a proposed project. This may be your most effective means of participation.

Written Comments

Public hearings are not held prior to the issuance of CAMA permits. The most effective way of participating in the permit decision-making process is to send written comments to the DCM in response to notices of proposed developments. District staffs of DCM and DWQ can provide assistance if you are unclear about the details of a project, or if you would like additional information.

Minor permits are often issued a week or two after application; major permits take six to ten weeks, or longer. Permit decisions must be made within 50 days for a minor permit and within 150 days for a major permit. (The law states that minor and major permits be decided in 25 and 75 days respectively, but allows this period to be doubled if necessary.)

Permit applications may be put on “administrative hold” if one or more review agencies request additional project information from the applicant. Also, permit applicants may request that permit processing be delayed while modifications to proposals are made in response to objections raised during the review period. If substantial modifications are made to a project proposal, DCM must issue another project notice and solicit additional comments from agencies and the public. However, for this to occur, DCM must decide if the changes are significant.

Permit processing must be followed closely through informal channels. Remember, complex projects may be modified several times. Be sure to specify the date of the plans you are commenting on.

Scattered Regulations

CAMA development policies and regulations are extensive. Important provisions can be located in different sections of the regulations and standards. Understanding the regulations and knowing where to find specific provisions is important, and you may have difficulty identifying all the relevant provisions. To help you in this process, write to DCM in Raleigh to obtain an index of the regulations.

Comments to Other Agencies

DCM relies on other agencies for technical review of water quality, fishery, and public health aspects of permit application. The division will not deny or place conditions in a permit on these technical grounds unless the reviewing agencies object to the project. The application is circulated to the agencies indicated in **Appendix 3**. The Divisions of Water Quality, Marine Fisheries, and Health Services make evaluation of the impacts on water quality and marine resources.

Send comments on technical issues to the reviewing agencies and to DCM. For maximum effectiveness, send your comments early so the agencies are aware of them during their technical reviews. For DWQ, send copies to the regional office and to the director in Raleigh. Both offices contributed to the final comment.

Information on site-specific features that are not readily apparent, such as shellfish harvest values or local navigation uses may be particularly valuable. Agency funding and staffing limitations often preclude intensive field surveys and data collection. Do not hesitate to share your local experiences with the regulatory agencies during the permit review.

Agencies are more likely to address specific concerns if concerned citizens request a copy of the reviewing agency's report or comments on the project.

Permit Appeals

When a permit is denied, the applicant can appeal the decision. The applicant must file a petition for a contested case hearing within 20 days of receiving the denial letter. Any citizen who would be adversely affected by the permit's issuance may join the state in supporting the denial.

When a permit is issued, people who may be adversely affected by the decision may file a petition for a contested case hearing. The petition must be filed within 20 days of the permit's issuance. The hearing will be granted if the chairman of the CRC believes the appellant has a reasonable chance of prevailing. If the request for a hearing is denied, that decision can be appealed to the state Superior Court.

Once a hearing is granted and begins, the contester must prove that the proposed project will violate CAMA and/or its regulations. An attorney and expert witnesses will usually be needed. CAMA major and minor permits can be appealed to the CRC. DCM reviews minor permits and may challenge a permit decision if it disagrees with how the local permit officer applied the rules. If you believe a minor permit was issued improperly, discuss your concerns with the division's Raleigh office. Several minor permits have been revoked after review.

Land-Use Plans

Land-use plans give residents an important opportunity to direct the future of their areas. The plans are intended to establish public agreement on the type of development that is acceptable in different areas. Effective plans can prevent developers from making unwise investments that result in the developer and local residents fighting for their livelihoods.

For land-use plans to be effective, citizens must participate in developing them. Unfortunately, citizens often show little interest in land-use plans until a proposed project threatens their area. Then they find the plans were formed without establishing appropriate land uses for sensitive areas. For everyone's benefit, citizens should take an interest in the plans before controversial projects are proposed.

Local land-use plans are reviewed and updated at least every five years. Local governments must hold public hearings to review and update the plans. This is an excellent opportunity to initiate effective policies and appropriate land classifications. The CRC's approval of the amendments to the land-use plan provides another chance for public participation.

Changes in the land-use plan can be initiated any time by the local government. Local governments may be receptive to requests by concerned citizens to make changes in the land-use plan. Public hearings must be held for all changes.

Commission Committee Meetings

Proposed regulation changes, land-use plan approvals and issues of concern are discussed in committee meetings at the CRC meetings. The public can join in these discussions. Let your thoughts be known if a committee is discussing a topic of interest to you. This is an excellent opportunity for open exchange of questions and answers among the public, commission, and staff. The division office in Raleigh can provide agendas for the meetings. The commission meets every two months.

Case Studies

Protecting and Estuary

Residents of a low-density estuarine waterfront neighborhood learned about a high-rise condominium, townhouses, and a 100-slip marina to be built on a 25-acre peninsula nearby. The residents organized a meeting to discuss the CAMA permit application. Sixty people formed a

group to oppose the project and to preserve the natural resources that had attracted them to the area. The group met with government officials and with experienced public-interest groups.

The group learned that their initial objections to the project were well founded. The marina and storm water from the condominiums would threaten shell fishing in the area. The marina dredging would destroy valuable salt marsh. The land-use classification map showed the site to be conservation rather than community as listed on the application. However, there was some confusion about the wording of the land-use plan.

The group submitted letters opposing the CAMA permit to the review agencies, talked with agency personnel and other public interest groups, and let the media know of their concerns. Other public interest groups subsequently submitted comments opposing the project.

DCM denied the CAMA permit. Several reviewing agencies objected to the project. It would violate at least six CAMA regulations, including water quality standards, salt marsh preservation, and local land-use plans.

A few months later the developer submitted a new plan. The marina was no longer included. The high-rise condominium remained, but was set back from the water. And now 100 small lots, each with a dock, rimmed the waterfront. The lots were too small for a reasonably sized house. However, they could be sold or rented to the condominium residents to ensure access to the water without meeting the requirements for a marina. The proposed handling of storm water was also controversial.

Again residents, about 250 strong, wrote letters, talked with other public-interest organizations, and met with agency staff.

A county commission meeting was called to resolve the confusion about the land-use classification. Residents attended the meeting to speak about the validity of the conservation classification and the threat of the project. They argued that the project was inconsistent with the conservation and community classifications. The county commission ruled the conservation classification was correct.

The developer was advised that the project was inconsistent with the conservation classification. To proceed with the project, the classification would have to be changed. A public hearing and approval by the CRC would be needed to change the land-use plan. The developer did not request the change.

This case shows that land-use plans and water quality standards can be decisive factors in maintaining water resources. The case also demonstrates the impact of citizen involvement. The citizens used formal and informal communication with many different agencies and organizations. They were persistent, generated public interest and support, followed the regulatory process closely, and participated actively.

References

1. The federal [Coastal Zone Management Act](http://coastalmanagement.noaa.gov/czm/czm_act.html) (http://coastalmanagement.noaa.gov/czm/czm_act.html) of 1972 is found at 16 USC 1451 et seq. The federal regulations are at 156 CFR, Part 923.

2. The [North Carolina Coastal Zone Management Act](http://www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_113a.html) (http://www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_113a.html) is found at NCGS 113A-100 et seq. The North Carolina regulations are in 15A NCAC Chapter 7. Key sections are:

Subchapter 7B — [Land use planning guidelines](http://www.nccoastalmanagement.net/Rules/Text/t15a_07b.pdf) (http://www.nccoastalmanagement.net/Rules/Text/t15a_07b.pdf) —contains procedures and requirements for land-use plans by local governments.

Subchapter 7H -- Guidelines for development in [Areas of Environmental Concern](http://www.nccoastalmanagement.net/Rules/Text/t15a_07h.pdf) (http://www.nccoastalmanagement.net/Rules/Text/t15a_07h.pdf) and details of general permits -- define the AECs and specifies the requirements for each.

Subchapter 7J -- Procedures for handling [major permits, enforcement, variance requests, appeals of minor permits and declaratory rulings](http://www.nccoastalmanagement.net/Rules/Text/t15a_07j.pdf) (http://www.nccoastalmanagement.net/Rules/Text/t15a_07j.pdf) --includes various substantive requirements.

Subchapter 7K -- Activities which do not require a permit -- [various exemptions](http://www.nccoastalmanagement.net/Rules/Text/t15a_07k.pdf) (http://www.nccoastalmanagement.net/Rules/Text/t15a_07k.pdf) from the permit requirements.

Subchapter 7M -- [General policies](#) of the Coastal Resources Commission -- valuable and useful policies to be considered in review of permits or land-use plans. Particularly useful sections include public access, water quality and mitigation.

3. The coastal storm water regulations of the Environmental Management Commission are found at 15 NCAC 2H, Section .1000.

4. [A Handbook for Development in North Carolina's Coastal Area](http://dcm2.enr.state.nc.us/Handbook/contents.htm) (<http://dcm2.enr.state.nc.us/Handbook/contents.htm>) by the Division of Coastal Management provides a basic explanation of the CAMA regulatory program and its rules.

5. *A Guide to Protecting Coastal Waters Through Local Planning*, 1986, by the Division of Coastal Management provides a concise and valuable summary of important coastal habitats, pollution sources and land-use planning concepts for preserving coastal water quality and habitat.

6. A useful and readable summary of background information on stormwater and marina pollution is provided in the report *Coastal Development and Shellfish Waters*, 1985 by the Division of Environmental Management.

7. Further information on storm water can be found in *Results of the Nationwide Urban Runoff Program, Volume I--Final Report*, 1983 by the U.S. Environmental Protection Agency, NTIS Accession No. PB84-185552.

8. Further information on the impacts of marinas is provided in *Coastal Marinas Assessment Handbook*, 1985, by the U.S. Environmental Protection Agency, Region IV, Environmental Assessment Branch, 345 Courtland Street, Atlanta, GA 30365, Report No. EPA 904/6-85-132.

9. *Evaluation of State Environmental Management and Resource Protection Programs in the A/P Region* by Robert C. Nichols, formerly of the Research Triangle Institute. Albemarle-Pamlico Study project 90-02. Can be obtained from the A/P Study, PO Box 27687, Raleigh, NC 27611-7687.

Chapter Five

Dredge-and-Fill Permits Under Section 404

Wetlands are an essential component of the waters of North Carolina: they provide tremendous ecological, social, recreational, and economic values. Key functions and values that wetlands provide include fish and wildlife production, water quality improvements, storm buffering, and flood control. Sport and commercial fishing and waterfowl watching and hunting are multimillion-dollar industries that depend on the protection of wetlands. The federal government estimates that more than half of North Carolina's wetlands have been lost or their ecological functions seriously impaired. The need for a collective voice to protect wetlands has never been greater.

The federal program regulating dredging and filling in wetlands is based on Section 404 of the Clean Water Act. It prohibits the discharge of dredged or fill materials into waters of the United States, including wetlands, unless a permit is obtained.

The U.S. Army Corps of Engineers (Corps) issues the Section 404 permits. The Corps also has the primary enforcement authority under Section 404. Although the Corps issues 404 permits, the EPA sets the minimum permit requirements and oversees the program.

The EPA's guidelines require the Corps to consider the effects of the project on wildlife, water quality, recreation, and other environmental factors before issuing a permit. Since the EPA can also comment on 404 permit applications, the final permit decision may be influenced through their remarks. In addition, the EPA can "veto" certain permits the Corps proposes to issue, and can impose penalties for violation of Section 404 in cases where a permit has not been issued.

Key Provisions

A complex regulatory program, complete with provisions for public participation, has been developed to implement Section 404. The provisions for protecting wetlands are the most important components of the 404 programs. However, they remain very controversial. Key aspects of Section 404 and its implementation are described in this chapter. It should be noted that this is a volatile policy area and the described regulations are subject to legislative or administrative changes.

Waters of the United States

Section 404 jurisdiction applies to "waters of the United States." This includes all public waters and wetlands. This means rivers, mud flats, natural ponds, lakes, impoundments of public waters, tributaries, swamps, marshes, and other wetlands.

Definition of Wetlands

Wetlands are defined as areas that are inundated or saturated by surface or groundwater often enough and long enough to support vegetation adapted to saturated soils. Wetlands generally include swamps, marshes, bogs, and can also include other areas that contain the proper indicators even if seemingly dry.

Wetlands are identified by three indicators – vegetation, soils, and hydrology. Wetland vegetation can grow, compete, reproduce, and live in saturated soils. Wetland soils are classified as hydric – soils that are saturated, flooded, or ponded long enough to develop anaerobic (no oxygen) conditions. Under natural conditions, all three wetland indicators must be present for an area to fall under 404 jurisdiction.

Dredge-and-Fill Activities

A 404 permit is required for the discharge of dredge or fill material into water or wetlands. These terms are defined as follows:

Dredged material: material excavated from U.S. waters.

Discharge of dredge material: any addition of dredged material into U.S. waters, including the addition of dredged material to a previous disposal site, and the runoff or overflow from a contained land or water disposal area.

Fill material: material used to replace an aquatic area with dry land or to raise the bottom elevation of a water body.

Discharge of fill material: the addition of fill material into U.S. waters. This includes: fill necessary to construct any structure in the water, such as a structure or impoundment requiring rock, sand, dirt, or other fill material; site development fills for recreational, industrial, commercial, residential, and other uses; causeway or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters and revetments; beach nourishment; levees; sewage treatment plants; intake and outfall pipes for power plants; underwater utility lines; and artificial reefs. Land clearing and/or drainage projects in wetlands are covered if they place or dispose of dirt in the wetland. Mechanized land clearing or landscaping is presumed to include at least some dirt placement. If the project involves discharges into traditional “navigable” waters, the Corps will require a 404 permit and a Rivers and Harbors Act Section 10 permit.

A number of dredge-and-fill activities are exempt from regulation under Section 404. These include:

- Normal, ongoing farming, silvaculture and ranching activities and construction or maintenance of farm, forest, or temporary mining roads.
- Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (not construction) of drainage ditches.
- Maintenance of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.
- Federal construction projects specifically authorized by Congress and planned, financed and constructed by a federal agency. (An Environmental Impact Statement, or EIS, must be prepared for these cases.)

Types of Permits Under Section 404

The Corps under Section 404 issues individual and general permits. Individual permits require extensive case analysis. General permits are allowed for activities that cause minimal adverse environmental impact, and the Corps and the Division of Coastal Management issue them. The issuance of a general permit goes through the same processing and review as an individual permit. Projects that meet the conditions of a general permit are automatically approved.

General permits have been issued by the Corps, and the Division of Coastal Management, for these specific coastal activities in North Carolina:

- To maintain, repair, construct and install piers, docks, boathouses, mooring pilings, buoys, jetties, breakwaters, boat ramps, utility lines, and bulkheads and riprap needed for eroding shorelines (not including ocean shorelines).

- To authorize emergency construction of primary dunes and placement of sandbags along the oceanfront.
- To dredge, fill, and construct piers, docks, bulkheads, riprap, boat ramps and boathouses and to install pilings within manmade basins and canal located in high ground.

In addition to these general permits, the Corps has 40 nationwide general permits in effect in North Carolina. These permits can be issued for activities that are both common, and in the Corps' determination, have "minimal or insignificant" effect on the nation's waters. Water and wetland projects less than an acre are usually permitted with nationwide permits; however, nationwide permits cannot be issued for projects larger than 10 acres.

Another general permit automatically approves 404 activities that have received a CAMA permit and a 401 water quality certification (described later). Many coastal projects fall under this type of general permit. If certain federal agencies, such as the U.S. Fish and Wildlife Service, strongly objects to the issuance of a general permit, then the project must be handled as an individual permit. If the Corps issues this type of general permit, an application must be filed before work begins, but the project receives an expedited public notice period. Some types of activities that are covered by general permits do not require publication notification.

The filling waters and wetlands that are isolated or above the headwaters are often authorized by a general permit. For proposed projects of one to 10 acres, the Corps requires individual permits for approximately 50 percent of the cases (those instances that involve isolated or adjacent wetlands). For coastal North Carolina, isolated waters and adjacent wetlands are not part of a surface tributary system or river that flows to the estuary. Above the headwaters means above the point on a non-tidal stream where the average annual flow is less than five cubic feet per second. (In eastern North Carolina, a drainage area of more than five square miles generates a flow of about five cubic feet per second).

In the case of a new subdivision in which total wetland fill would be greater than 10 acres, the general permit would not be available for individual lots.

In certain designated maritime forests, even the smallest fills must receive advance Corps approval. These are Kitty Hawk Woods, Nags Head Woods, Buxton Woods, Roosevelt Natural Area, Emerald Isle Woods, and Bald Head/Smith Island complex.

Agency and Public Review

Applications for individual permits and Corps-CAMA general permits are reviewed by federal and state agencies and the public. The Corps solicits comments from federal and state agencies when the development affects between one and ten acres of isolated or headwater wetlands. Agencies that review Corps permits are listed in **Appendix 3**. Citizens may request placement on the Corps mailing list to receive public notices that list all individual and CAMA general permit applications under consideration. Public notice of the project is usually published in a local newspaper because this is a requirement for a CAMA permit and for 401 certification from DWQ. However, such notices are usually small and easy to overlook.

Permit Requirements: 404(b)(1) Guidelines

Each Section 404 application must comply with guidelines set by the EPA before a permit can be issued. These 404(b)(1) guidelines, named after the corresponding provision of the Clean Water Act, require that the Corps must make the determination that there is no less environmentally damaging practicable alternative for the development. Key requirements of the guidelines for individual permits include:

- There must be no practical upland alternative for the proposed project.
- The project must be water dependent. Projects that require water or proximity to water for

their basic purpose are water dependent. Boat ramps and docks are water dependent, but restaurants, houses, and parking lots are not.

- The project must not violate water quality standards.
- The project must not cause or contribute to significant degradation of U.S. waters. This includes damage to aquatic life; aquatic system diversity, productivity, and stability; habitat; and recreational, aesthetic, and economic values.
- Secondary impacts of the project must be considered. These are impacts resulting from the project but not from the placement of the dredged or fill material.
- Cumulative impacts of the project must be considered. These are changes attributable to the collective effect of a number of projects, even though the impacts of each project alone may be minor.
- The proposed project must represent the least environmentally damaging alternative. All appropriate and practical steps must be taken to minimize adverse impacts.
- The proposed project must meet other federal, state, and local requirements.

Permit Requirements: 401 Certification

Section 401 of the Clean Water Act requires that the state agency responsible for water quality certify that proposed projects do not violate water quality standards. In North Carolina, the Division of Environmental Management issues 401 certifications. The Corps must have 401 approval from DWQ before the 404 permit is issued. The Clean Water Act requires public notice and an opportunity for public hearing in the 401 certification. Also, as with general permits, general 401 certifications are issued for certain types of projects. Some projects that are being undertaken under a general permit may still need an individual 401 certification. If the DWQ determines the project should be reviewed individually, then the public notice can be provided.

Permit Requirements: CAMA Consistency

In coastal counties, individual permits, and some projects proceeding under a general permit, must be reviewed by DCM. DCM staff must determine whether the project is “consistent” with the state’s coastal management program. If not, the permit may not be issued.

Permit Requirements: Public Interest Review

The proposed project must not be contrary to the public interest. The Corps evaluates the project to determine the public and private need for it, the feasibility of alternative locations and methods, the beneficial and/or detrimental effects, and the cumulative effect created by existing or anticipated projects.

Permit Requirements: Environmental Assessments

The Corps prepares a report called an Environmental Assessment that discusses the project’s impacts and possible alternatives. If the agency determines that the project could have a significant impact on the environment, then they must prepare an Environmental Impact Statement (EIS) (see Chapter 7). The Corps makes the decision to require an EIS based upon the nature of the proposed project and the degree of public concern it has created.

If an EIS is needed, federal requirements mandate that the public be involved in the identification and evaluation of issues. The corps holds public meeting and solicits written public comments to identify what issues must be evaluated. After a draft impact statement is prepared, another hearing and comment period allows for public review.

Hints on Public Participation

Citizen involvement is essential in Section 404 permit reviews. As with CAMA permits, it is important to inform the Corps of your concerns and interests in proposed projects. If you receive materials or comments from other agencies pertaining to the Section 404 activities, make

sure that the Corps has these materials in their project file. Do not hesitate to share your personal knowledge of the area with the Corps officials.

Staying Informed

All too often, citizens become aware of the Section 404 program when they see a project under construction that disturbs them. Unless that project is being built without permits, it is too late for the public to exert much influence. As with all permit programs, the earlier citizens get involved with Section 404 project reviews, the greater success they will have in protecting the state's water resources.

The Corps provides public notices when applications are submitted for individual permits, Corps-CAMA general permits, and changes in the regulatory requirements for general permits. Any citizen may ask to receive these public notices free by writing the Corps (See **Appendix 1**). In addition, the state places a notice in the legal section of a local newspaper when a Corps-CAMA general permit application has been received. The public notice for 401 certification is given jointly with the CAMA notice. Permit applicants also must place a sign on the site stating that a CAMA permit application is pending. You must be diligent if you are going to stay informed of these public notices.

Under the Freedom of Information Act, all federal information, including that pertaining to Section 404 permit applications and other Corps business, is public information. You may visit the Corps office and ask to see the files on any project. It is possible to have complete copies of permit files sent to you, often at no cost, if a trip to Wilmington during business hours is unreasonable. Make requests for information in writing, if possible, after talking with Corps personnel. Date the request and keep a copy of your records. In any request for information:

- State that you are making a Freedom of Information Act request.
- Include as much specific information as possible to describe your request, including the name of the project, property owners, and permit application code.
- Request a copy of everything in the file including letters, memorandums, notes of telephone conversations or office meetings, maps, etc.
- Request a fee waiver by stating the information will be used for a public purpose, such as enhancing public participation in the permit process. If your request is for an organization, describe the purposes of your group and how it will use the information.

The only formal way to stay informed of Section 404 regulatory changes is through the Federal Register. Even though some libraries receive the Register, it is unlikely you will find a notice unless someone tells you about it. Instead, frequently talk to regulatory agency personnel, conservation organizations, and congressional members to stay up-to-date on changes. Many of these people will help you stay posted on regulatory changes once they know you're interested.

Influencing Jurisdiction Calls

No opportunity exists for public participation if the Corps decides a project is not within its jurisdiction. Determinations of 404 wetlands continue to be controversial, particularly when they involve the pocosins, freshwater wetlands, or pine flatwoods found in coastal North Carolina. In general the delineation of wetlands is a major ongoing controversy, and the details of the law are subject to change. If you see a project underway in a wetland area, call the Corps and ask if the project is permitted. If the Corps says the project does not involve wetlands and you think it does, call EPA or other federal agencies to ask for assistance. EPA has the ultimate responsibility under the Clean Water Act to identify wetlands correctly.

Making Comments

To ensure a thorough permit review, many people should write to express concerns about the project and to request a public hearing and EIS. The Corps then decides to hold a hearing or

require an EIS based on a project's impact on the human environment. That decision is influenced by the number of public comments and the level of public attention the application receives.

As with CAMA permits, you should send your written comments to all agencies that review Section 404 permit applications (See **Appendix 3**). The Corps is not required to send your comments to other agencies. EPA and the U.S. Fish and Wildlife Service, in particular, are interested in information about water quality or fisheries. Although not all of the agencies have responsibility for your area of concern, they still may be interested in your comments. Agencies will often provide more detailed review to projects receiving intense public attention.

Site-specific information that is not readily apparent, such as shellfish harvest values or local navigation uses, may be valuable for reviewing agencies. To ensure the greatest effect, provide your comments well in advance of the submission deadline. If you have specific concerns about a project, follow-up with a telephone call, or request a copy of the agency's project report.

It may be helpful to provide additional comments after you have viewed field reports in the permit file. Often agency staff express concerns about a project which you can reinforce with additional local information relevant to that concern.

In addition to providing general comments about the project, list technical and legal justifications for your position too. In particular, references to the 404(b)(1) guidelines mentioned earlier and other applicable regulations are valuable. Get help to develop these comments if you are unsure about what regulations are relevant (See **Appendix 2**). The critical requirements are that the project is water dependent, upholds water quality standards, and is the only practical alternative.

401 Certification

The 401 certification determines whether a 404 project is expected to cause a violation of the antidegradation regulation or other water quality standards. The DWQ requests public input during the 401 certification process, but you must submit written comments and requests for public hearings quickly. Certification decisions may be made as early as 15 days after the public notice appears in the newspaper. However, the decision usually takes longer, particularly for complex projects. The decision must be made within 130 days of receiving a complete application unless a public hearing is held.

DWQ will hold a public hearing on the water quality aspects of a project if there is significant public interest in the 401 certification. A large number of requests increases the likelihood that a hearing will be granted. Public notice must be given 30 days prior to a hearing, and written comments must be accepted for 30 days.

Enforcement

The Corps has a small staff to cover the coast. Therefore, it is difficult for them to be sure that projects do not violate Section 404 regulations.

Call the Corps if you see a project that you think is violating Section 404 regulations. Suggestions for reporting or obtaining information about potential violations were described in the enforcement section of Chapter 2.

Send copies of all correspondence on a possible violation to the regulatory agencies listed in **Appendix 3**. They may want to investigate the case, or can provide an independent opinion about whether the project is in violation of regulations.

Citizen Suits

Citizens can bring a lawsuit if they believe that provisions of Section 404 (or any other section of the Clean Water Act) are not being implemented as required by law. This citizen suit provision is important because you cannot bring an administrative appeal under Section 404. In

general, citizen suits are complicated and time-consuming. To compensate victorious citizens, the court can award attorney fees and other legal costs. This provision also encourages law firms to take these cases on a contingency basis, particularly if the suit is strong. If you think you need to go to court to solve a problem, seek advice from a citizens group listed in **Appendix 2**.

Case Studies

Citizen Enforcement

A wooded wetland swamp along a dirt road off a major state highway was being filled with stumps, logs and other trash from another site. A federal employee, in the area reviewing an unrelated Section 404 permit application, noticed the fill and notified the Corps. However, the site continued to be filled.

An area resident also recognized the violation of Section 404 regulations.

This case demonstrates that the public plays an important role in enforcing the regulations for wetlands and that persistence is often needed to obtain enforcement.

Citizen Suit

Several corporations announced plans to drain, clear, and strip mine thousands of acres of peat bogs on the Albemarle-Pamlico peninsula. Area fishermen believed the hydrologic modifications resulting from the projects would disrupt their fisheries. They were alarmed when they discovered that no Section 404 permits were being required for the projects. The Corps determined that ditches and canals existing in the peat bogs prevented the bogs from functioning as wetlands.

Joining with state and national organizations, the fishermen filed a federal lawsuit against the Corps protesting its decision. After lengthy proceedings, the judge remanded the case back to the Corps. He ruled that the Corps failed to consider critical information, and that its decision was arbitrary and capricious. He later ordered the Corps to pay the plaintiffs nearly \$410,000 to cover attorney fees and other court costs.

This lawsuit indicates that citizens can challenge the Corps on its wetland identification decisions, and it shows that citizens can be reimbursed for their court costs. This case could help to attract free legal aid for other cases. This case was also a major factor in the EPA's decision to make wetland jurisdiction decisions for pocosin wetlands in 19 North Carolina coastal counties. In addition, the lawsuit resulted in a large company donating 120,000 acres for a wildlife sanctuary.

References

1. [Section 404](#) of the Clean Water Act is 33 USC Section 1344. Regulations adopted to administer Section 404 are at 33 CFR Parts 320 through 330. The 404(b)(1) guidelines are found in 40 CFR Parts 230. State regulations on the 401 certification are at 15A NCAC 2H .0500.
2. A comprehensive description of Section 404 is found in *404 Feasibility Study: Summary of the Final Project Report* by Judith A. Gale, C Luther Propst and Ruth E. Sappie; Center for Environmental Studies, North Carolina State University, Raleigh, NC 27695-8100; May 1985.
3. Technical guidance on wetland determinations is provided in *Corps of Engineers Wetlands Delineation Manual*; Technical Report Y-87-1; Environmental Laboratory, Department of the Army; Waterways Experiment Station, Corps of Engineers, PO Box 631, Vicksburg, MS 39180-0631; January 1987.

4. A list of plants that occur in wetlands in the southeast is provided in Corps of Engineers Wetlands Delineation Manual: Appendix C; Sections 1 and 2; Region 2 - Southeast; Technical Report Y-87-1; Environmental Laboratory; Department of the Army; U.S. Army Engineer Waterways Experiment Station, PO Box 631, Vicksburg, MS 39180-0631; January 1987.

5. A series of three articles that describe the purpose and scope of Section 404 are found in Wildlife in North Carolina; July (Vol. 51; No. 7), August (Vol. 51; No. 8), and September (Vol. 51; No. 9), 1987; 512 N. Salisbury Street; Raleigh, NC. 27611.

6. The U.S. Fish and Wildlife Service has National Wetland Inventory (NWI) maps that identify the most likely locations of wetlands. The NWI maps which identify coastal wetlands are nearly complete for North Carolina. The maps are overlaid on USGS quad sheets and cost \$2.00 each. They can be obtained from the State Distribution Center located within the Division of Soil and Water Conservation (919/733-2392).

7. Evaluation of State Environmental Management and Resource Protection Programs in the A/P Region by Robert C. Nichols, formerly of the Research Triangle institute. Albemarle-Pamlico Study Project 90-02. Can be obtained from the A/P Study, PO Box 27687, Raleigh, NC 27611-7687.

8. A Citizen's Guide to Protecting Wetlands in North Carolina by the Southern Environmental law Center, May 1992. Can be obtained from SELC, 137 E. Franklin Street, Suite 404, Chapel Hill, NC 27514-3628.

Chapter Six

Sediment and Erosion Control

When natural land cover is disturbed during the construction of residential and commercial structures or highways and bridges, the rate at which soil erodes increases dramatically. In terms of volume and effects, sediment is the largest single cause of water quality degradation in North Carolina, accounting for about 60 percent of all impaired waters.

Sediment can damage natural estuarine productivity by preventing light penetration, thus reducing habitat and oxygen levels. It also can reduce survival of fish eggs and larvae, and can smother bottom-dwelling aquatic life. Sediment carries nutrients, toxic chemicals, and other pollutants attached to its particles.

The N.C. Sedimentation Control Act was enacted in 1973 to protect the State's waters from degradation by soil eroded from land-disturbing activities. The law is implemented by the Sedimentation Control Commission and the Division of Land Resources.

Local governments can develop programs for erosion control, subject to approval by the Commission. In the coastal area, New Hanover County, Jacksonville, Kitty Hawk, Nags Head, and Ocean Isle Beach have implemented local programs.

Key Provisions

Standards

The sedimentation law applies to any land-disturbing actions that may increase sedimentation. However, the law does not apply to agriculture, forestry activities conducted in accordance with forest practice guidelines, and mining.

The law requires that no visible sediment enter public waters as a result of land-disturbing activity. In fact, a buffer zone must be used along the water to confine visible siltation to the landward 25 percent of the zone.

Sediment-control structures must prevent sediment from leaving the site. The structures commonly used are silt fences made of fabric or plastic, placed along the edge of the site, or basins, and/or ditches to collect and settle sediment.

Land stabilization by vegetation or other permanent means must be put in place within 30 working days of any phase of grading on slopes, and within 30 working days or 120 calendar days of completion of construction and development.

Erosion Control Plans

For sites that disturb more than one acre of land, an erosion control plan must be approved prior to construction. The plan must show how sediment will be controlled at the site and must be submitted to either Land Resources or the local erosion control program 30 days prior to land disturbing activities.

Sediment must be controlled at all sites, large or small, according to the standards described above. But an approved plan is required only for sites larger than one acre.

Stormwater Control

Any project that requires an erosion control plan in the 20 coastal counties must also comply with the coastal stormwater regulations adopted by EMC.

Hints on Public Participation

Report Sediment Pollution

Notify the Division of Land Resources of sites that are not properly controlling sediment during or after construction. Citizens can check sites to observe that significant sediment does not leave the sites during rain events of less than a 10-year expected frequency, or that erosion control devices are in place.

The Land Resources staff encourages the public to report violations. In response to citizen reports, the staff visits the site and requires sediment controls. Since the sediment control staff spends a lot of time making site inspections, be persistent in reaching the right staff person.

The Division of Land Resources publishes *The Erosion and Sediment Control Field Manual* that explains how sediment devices should be designed and constructed. The manual is an educational tool that can help you evaluate possible violations. It can be obtained from the Division of Land Resources for \$30. In addition to manuals, the Division also has produced instructional videos that deal with sediment and erosion control devices.

There is no public notice or opportunity for comment on erosion control plans.

Lawsuits

Any person who suffers losses because of sediment from land-disturbing activities can file a lawsuit for damages. The court may award costs of litigation, including attorney and expert witness fees, to the plaintiff if the ruling is in his or her favor. This law allows those damaged to recover their losses from the responsible party. Fines collected by the state do not directly help people damaged by violations of the regulations, but do go to an “educational fund” to help prevent future violations.

Case Studies

Citizen Enforcement

A person noticed that a nearby five-acre construction site for a shopping center did not have erosion control measures. He called the Division of Land Resources to report the problem. The Division discovered that no erosion-control plan had been submitted and visited the site two days later.

The on-site visit verified that the project needed an erosion-control plan, and fortunately, no off-site damage had yet occurred. The division notified the developer of the violation and gave him 10 days to submit an erosion-control plan and install temporary measures to control off-site damage. The plan was submitted in nine days and approved by the state 15 days later. The erosion control measures required by the plan were implemented a few days later.

The developer was not fined because he responded promptly to the notice of violation. (Currently, a citizen can be fined up to \$1,000 for starting a project without a permit).

This case shows the importance of citizen help in enforcing sediment control regulations. Due to limited staff and the large number of projects, the enforcement of sediment-control regulations relies heavily on citizen response.

References

1. [The North Carolina Sedimentation Pollution Control Act of 1973](#) is NCGS 113A-50 through 71. The regulations are in 15A NCAC Chapter 4.
2. The [Sedimentation and Erosion Control Guide for on-site Construction](#) provided by the Division of Land Resources gives simple explanations of sediment-control methods. It is aimed at the general public.
3. An [Erosion and Sediment Control Design Manual](#), developed by the Division of Land Resources, is an extensive desk-top reference for design professionals and others

interested in sediment control.

5. *Evaluation of State Environmental Management and Resource Protection Programs in the A/P Region* by Robert C. Nichols, formerly of the Research Triangle Institute; Albemarle-Pamlico Study Project 90-02. Can be obtained from, The A/P Study, P.O. Box 27687, Raleigh, NC 27611-7687.

Chapter Seven

Other Environmental Laws

The four regulatory programs described in the previous chapters are the major elements of North Carolina's coastal resource management program. There are other programs, however, that affect our estuarine resources. This chapter provides a brief description of them and tells how citizens may participate in them.

NPDES Permit

A National Pollutant Discharge Elimination System (NPDES) permit must be obtained for any discharge of wastewater into surface water. The permit covers the construction and operation of wastewater treatment plants, including municipal sewage plants.

The Clean Water Act requires that NPDES permit programs be developed and meet certain requirements. The program implemented in North Carolina by the EMC and Division of Environmental Management has been approved by EPA. Any changes to the program must also be approved by EPA.

A proposed treatment plant must treat wastewater to meet limits set in the NPDES permit. Minimum permit limits are set by federal regulations for various types or categories of wastewater. These limits are required for all treatment plants within a specific category such as textile plants or domestic sewage plants.

A discharge to surface waters must also meet water quality standards, including the antidegradation requirement. If a discharge meeting minimum (technology-based) limits would violate water quality standards at a location, then the NPDES permit will contain more stringent limits. The permit will be denied if it is impossible to develop a reliable treatment system that protects water quality standards at a site.

Public Participation

A public notice for a proposed NPDES permit is published in a local newspaper and sent to people who request copies of NPDES notices. The notice lists the location and size of the proposed treatment plant and indicates that a draft permit decision has been made. The draft permit decision will contain tentative permit limits or explain the reason for denying the permit. The public can submit written comments on this draft permit decision for 30 days after the notice.

A public hearing will be held if there is significant public interest in the draft permit. Requests for a hearing are submitted during the period for written comments. Notice of a public hearing is published in a local newspaper and sent to the NPDES mailing list 30 days prior to the hearing.

DWQ makes the final permit decision after the comment period is over.

Wastewater Discharged into the Ground

Wastewater disposal systems such as septic tanks, spray irrigation systems, and rotary distributors that release treated wastewater into the soil require permits. These soil absorption systems are called non-discharge systems because they do not discharge to surface waters. Permits are also required for construction of sewer lines.

The Division of Environmental Health or local health departments issue permits for residential septic tanks. DWQ issues permits for other non-discharging wastewater systems, including septic tanks that are publicly owned or for industrial, spray irrigation systems, land application systems, rotary distributor systems, and sewer lines.

Public Participation

There is no public notice or formal chance to comment on these permits even though they are often critical environmental decisions. However, written comments submitted to, and discussions with, the appropriate agency will be considered in the permit decision. But it is not easy to find out about these permit applications. Sometimes you can learn about them through the CAMA permit process. Or if public funds will be used to build a system, a state EIS may be prepared.

Mining Permits

A state mining permit is required for any land-disturbing activity that affects one or more acres and is associated with mining minerals, ores, soils, or other solid matter. The permit is issued by the Division of Land Resources. A reclamation plan and performance bond must be provided before the permit will be issued.

The law states that the permit may be denied if the activity: adversely affects wildlife or fish; violates water or air quality standards; adversely affects a publicly owned park, forest or recreation area; or may deposit substantial quantities of sediment in stream beds or may cause acid water pollution.

Public Participation

Notice of the proposed mine is given to all adjacent property owners and to the local government. If there is significant public interest, a public hearing will be held. The public hearing requires only 10 days notice. The permit decision must be made within 60 days of the permit application if no public hearing occurs and within 90 days if one does occur. Since the permit decisions may be made as soon as 10 days after the notice, comments and hearing requests should be made quickly.

State Environmental Impact Statements

Permit review conducted by individual regulatory programs seldom evaluate cumulative and secondary impacts. Therefore, additional evaluation of projects is often needed. North Carolina law requires that some projects be evaluated more extensively. The project requires a state EIS if it: expends public money, requires action by a state agency such as issuance of a permit, and has a significant environmental effect.

Many projects significantly affect the environment but are privately financed and not subject to a more comprehensive evaluation. "Public money" refers to funds of a state or local public or quasi-public entity. The term does not include: resources used solely for processing a license, a certificate or a permit; the lending of credit; or the providing of technical services.

State actions include licensing, certification, permitting, the lending of credit, expenditures of public money, and other final agency decisions.

Environmental effects include primary, secondary, and cumulative impacts of a project or program that may be significant.

All proposed activities that include all three conditions listed above must complete an Environmental Assessment (EA). This includes maps and a brief discussion of the following items: need for the proposed activity, reasonable alternatives to the recommended course of action, methods to mitigate or avoid adverse environmental impacts, and environmental effects of the proposed activity and alternatives.

Once an EA is prepared, the state agency overseeing the project must decide if it is complete. If the agency determines the proposed project has no significant adverse environmental impacts, then it submits the assessment and a Finding of No Significant Impact, or FONSI, to the State Clearinghouse, in the Department of Administration, for review. The clearinghouse circulates these documents to state and local officials to obtain comments. It also

publishes a summary in the Environmental Bulletin. The public is given 15 working days to comment after the bulletin's publication. Based upon comments received, the clearinghouse decides if an impact statement must be completed.

If the clearinghouse determines that all three criteria have been met, an EIS must be prepared. The agency preparing the EIS may hold a meeting to define the issues that it should address. The impact statement should describe:

- the purpose and need for the proposed project,
- alternatives to the proposal and their impacts,
- appropriate mitigation measures,
- assessment of social and economic impacts of each alternative, and
- the environmental consequences of the proposal.

The state may hold a public hearing on the draft impact statement. It must allow 30 days for public comment on the draft once a notice is published in the Environmental Bulletin. Another 15 days are allowed for comment on the final EIS after its notice is published in the bulletin.

The lead state agency makes its decision on the proposed project based on information in the EIS. Any state or local agency or citizen may request that the decision be reconsidered by the secretary of the agency's parent department. This request must be made in writing. The decision by the secretary is final.

Public Participation

The rules governing implementation of an EIS leave much to the discretion of the state agencies. Decisions about impact statements, public hearings, and certification are difficult to challenge through legal means. Consequently, it is important to have a lot of people request an EIS. Public involvement is essential if the EIS process is to work as the legislature intended.

Local governments can require an EIS from private developers, even if no public money is involved, for projects of two or more contiguous acres. This provision has rarely been used but could be an important planning tool for citizens.

Federal Environmental Impact Statements

Many federal agency actions are subject to requirements of the National Environmental Policy Act (NEPA). This act requires that EISs be prepared for major federal actions that significantly affect the quality of the human environment. For example, Section 404 permits issued by the Corps for projects that would have major environmental impacts require an EIS. EPA's funding of municipal sewage systems is another example of a federal action that requires an EIS. These impact statements should assess:

- unavoidable adverse environmental impacts,
- mitigation efforts,
- alternatives to the proposed action,
- relationships between short-term uses of the environment and long-term productivity, and
- irreversible use of resources due to the proposed action.

The process used to prepare federal EISs are similar to those used for state EISs.

Public Participation

Again, the rules governing preparation of federal EISs leave much to the discretion of the federal agency responsible for the project. But the public should make every effort to become involved in every step of the process. This includes the session to define the issues, the review of the draft impact statement, and the review of the final document.

One final point about the EIS process. The purpose of an EIS, state or federal, is to

disclose the expected impact of alternative regulatory decisions. Unfortunately, the EIS process does not require government agencies to choose the lowest impact alternative.

Chapter Eight

Non-Regulatory Ways to Protect Water Resources

There are other ways besides involvement with government regulatory agencies for citizens to help protect their coastal resources. They can participate in non-regulatory programs designed to preserve coastal resources. Many of these programs have been instrumental in preserving some of our most fragile coastal areas.

This chapter provides an overview of these programs. Contact them for more information about their activities.

State Natural Resource Programs

Stream Watch, Stream Watch Coordinator, Division of Water Resources, PO Box 27687, Raleigh, NC 27611, 919/733-4064.

Stream Watch is a citizen program that encourages people to become active stewards of the state's rivers, streams, estuaries, and lakes. Citizen groups identify a waterway or an entire watershed and adopt the area. More than one group can adopt a body of water. The State provides the group with maps, information on water resource issues, and technical support.

The Stream Watch group inventories its adopted area. It learns about its history, land uses, natural assets, potential and present needs, and problems. The group also monitors planned development and watches for adverse effects on their waterway. Violations of regulations and potential problems are reported state agencies.

By staying informed about local, state, and federal plans that effect their waterway, these groups are a focal point for citizen participation in water resource issues.

These volunteer monitors have been successful in other states and initially in North Carolina. Several Stream Watch groups have been formed in Eastern North Carolina. The Stream Watch Program is coordinated by the N.C. Division of Water Resources. Some small grants are available for Stream Watch projects such as educational materials, stream cleanups, and river back restorations.

N.C. Natural Heritage Program, PO Box 27687, Raleigh, NC 27611, 919/733-7701.

The N.C. Natural Heritage Program identifies areas of our natural environment that need preservation. A statewide inventory of the most significant natural areas is prepared and updated in an ongoing process.

Once an important natural area has been identified, the Natural Heritage Program encourages protection of the area. For areas owned or managed by the government, preservation management programs are recommended. For privately owned areas, the program advises owners of management needs and preservation methods. The Registry of Natural Heritage Areas honors both private and public landowners who take preservation steps. In addition, the program works with landowners to assist in donating areas to public agencies or nonprofit preservation organizations.

The Natural Heritage Program can assist people in determining the special features of a natural site and advise them about the options for protecting it. In fact, requests for help from citizens are a common way of locating important natural areas.

Land Acquisition

Often, the best way to protect fragile lands is through fee-simple ownership by a conservation-oriented agency or organization. Another means of land protection is through

conservation easements that set permanent limits on the development of private land while the owner retains ownership of the property. Landowners who donate land or make conservation easements can receive federal and state tax deductions.

To explore the option of land acquisition, talk with the N.C. Heritage Program. Some of the organizations that can assist in acquiring land for conservation purposes include:

N.C. Nature Conservancy, Carr Mill Mall, Suite 223, Carrboro, NC 27510, 919/967-7007.

The Nature Conservancy (TNC) is a national, nonprofit organization dedicated to the preservation of important natural area through acquisition, conservation easements, and management agreements. The North Carolina chapter has helped preserve more than 300,000 acres of important habitat, some of it in critical coastal areas. TNC, which often serves as an intermediary in transferring property from individuals to government bodies, manages 31,477 acres at 46 sites across the state.

N.C. Coastal Reserve Program, Center for Marine Science Research, 7205 Wrightsville Avenue, Wilmington, NC 28403, 919/256-3721.

The N.C. Coastal Reserve Program, managed by the Division of Coastal Management, preserves coastal natural areas (approximately 10,500 acres) for research, education, and compatible traditional use. The Coastal Reserve Program accepts ownership and responsibility for areas not limited by regulations of the national estuarine program. Most lands in the program have been purchased by the state, but the division also accepts donations.

The N.C. National Estuarine Research Reserve Program (formerly the Estuarine Sanctuary Program) is a state-federal component of the Coastal Reserve Program.

In addition to the reserve program, DCM also works with local governments to provide public access to coastal waters. Public access depends heavily on contributions of land and easements.

N.C. Division of Parks and Recreation, PO Box 27687, Raleigh, NC 27611, 919/733-4181.

The agency administers a system of parks, nature preserves, scenic rivers, trails, and recreational lakes. It may acquire land and can receive conservation easements that protect the park system.

N.C. Wildlife Resources Commission, 512 N. Salisbury St., Archdale Building, Raleigh, NC 27611, 919/733-7133.

This agency administers North Carolina's gamelands for wildlife management, hunting and fishing. It owns some of the areas, leases others and acquires land and conservation easements for protection of wildlife of special interest.

Local Governments

All local governments have the authority to acquire land and conservation easements. How the government uses the land or manages the easements will depend on its commitment to the wishes of the donor.

Appendix 1

AGENCY MAILING LIST

N.C. DIVISION OF COASTAL MANAGEMENT

Information: Coastal Area Management Act Major Development and General Permits Monthly Report; CAMAGRAM, report of the Coastal Resources Commission; and agenda and minutes of Coastal Resources Commission.

Address to get on mailing lists: Division of Coastal Management, 1638 Mail Service Center, Raleigh, NC 27699-1638.

Telephone: 252-808-2808

Email: DCMFrontdesk@ncmail.net

Website: <http://dcm2.enr.state.nc.us/>

U.S. ARMY CORPS OF ENGINEERS

Information: Public notices of permit applications, public hearings and proposed rule changes.

Address to get on mailing list: U.S. Army Corps of Engineers, P.O. Box 1890, Wilmington, NC 28402-1890.

Telephone: (910) 251-4640

Email:

Website: <http://www.saw.usace.army.mil/>

N.C. STATE CLEARING HOUSE

Information: Bi-weekly North Carolina Environmental Bulletin listing information pertaining to state of federal environmental impact statements.

Address to get on mailing list: State Clearinghouse, 1301 Mail Service Center, Raleigh, NC 27699-1301

Telephone: (919) 807-2425

Email: chrys.baggett@ncmail.net

Website: <http://www.doa.state.nc.us/doa/clearing/clearing.htm>

OFFICE OF ADMINISTRATIVE HEARINGS

Information: North Carolina Register, published monthly, contains notices of proposed regulations, newly adopted regulations, new laws, executive orders, and other legal actions pertaining to regulatory programs. The register can be found online. Hard copy subscriptions cost \$208 a year. County libraries should also have copies.

Address to get subscription: Office of Administrative Hearings, Attn. Rules Division, 6714
Mail Service Center, Raleigh, NC 27699-6714.

Telephone: (919) 733-2678

Email: oah.postmaster@ncmail.net

Website: <http://www.oah.state.nc.us/rules/register/>

N.C. DIVISION OF LAND RESOURCES

Information: Agenda and minutes of Mining Commission and Sedimentation and Erosion
Control Commission.

Address to get on mailing lists: 512 North Salisbury Street, P.O. Box 27687, Raleigh, NC
27611-7687.

Appendix 2

Citizen Organizations Involved in Coastal Resource Management

Agricultural Research Center

115 W. Main St.
Carrboro, NC 27510
919/967-1886

Albemarle Environmental Association

121 Shore Drive
Shiloh, NC 27974-6241
252/336-4778

Web: <http://members.inteliport.net/~aea/>

Email: aea@members.inteliport.net

Cape Fear Sierra Club

Box 5093
Wilmington, NC 28403
910/395-2183

Web: <http://nc.sierraclub.org/capefear/index.html>

Contact: Michael Pope, popem@bellsouth.net, 910-763-6929

Carteret County Crossroads

P.O. Box 155
Beaufort, NC 28516
252/726-6663

Web: <http://home.earthlink.net/~crossroadsweb/nl87.html>

Contact: Richard Bierly, cn3794@abaco.coastalnet.com

Conservation Council of North Carolina

P.O. Box 12671
Raleigh, NC 27605
919/839-0006

Web: <http://www.conservationcouncilnc.org/>

Email: info@conservationcouncilnc.org

Contact: Carrie Clark, executive director, carrie@conservationcouncilnc.org

Friends of Hatteras Island

P.O. Box 669
Buxton, NC 27920

919/995-6649

Contact: Carol Anderson

Friends of Newport River

Route 2 Box 7-R
Newport, NC 28570

Friends of Roanoke Island

P.O. Box 1750
Manteo, NC 27954
919/473-6365

Friends of State Parks

P.O. Box 37655
Raleigh, NC 27627

Web: <http://www.rasman.com/fsp/>

Email: FSP@rasman.com

Haw River Assembly

P.O. Box 187
Bynum, NC 27228
919/542-5790

Web: <http://www.hawriver.org/>

Email: info@hawriver.org

Institute for Southern Studies

P.O. Box 531
Durham, NC 27702
919/419-8311

Web: <http://www.southernstudies.org/>

Email: info@southernstudies.org

Izaak Walton League

126 Sutton Drive
Cape Carteret, NC 28584
(252) 393-7315

Contact: G. Allen Fox, jkfox@ec.rr.com

Land Stewardship Council

P.O. Box 25716
Raleigh, NC 27611-5716
919/836-1990

LEGASEA

13 Steve Basnight Rd.
Manteo, NC 27954

919/441-8123
Contact: Michael McOwen

Neuse River Foundation

220 South Front Street
New Bern, NC 28560
(252) 637-7972

Web: <http://www.neuseriver.org/>
Email: info@neuseriver.org

League of Women Voters of North Carolina

3801 Barrett Drive, Suite 204
Raleigh, North Carolina 27609
(919) 783-5995

Web: <http://www.lwvnc.org/>
E-mail: lwvnc@mindspring.com

North Carolina Alliance for Conservation Action

PO Box 10627
Raleigh, NC 27605
919/856-1581

North Carolina Clean Water Fund

P.O. Box 1008
Raleigh, NC 27602
919/832-7491

North Carolina Environmental Defense Fund

2500 Blue Ridge Road, Suite 330
Raleigh, NC 27607-6454
919/881-2601

Web:
http://www.environmentaldefense.org/regionaloffices_individual.cfm?subnav=northcarolina
Email: members@environmentaldefense.org

North Carolina Fisheries Association

P.O. Box 12303
New Bern, NC 28561
919/633-2288

Web: <http://www.ncfish.org/>
Contact: Jerry Schill, jerry.schill@ncfish.org

North Carolina League of Conservation Voters

Box 12462
Raleigh, NC 27605
919/833-1923

Contact: John Runkle
jrunkle@nando.net

League of Women Voters of North Carolina

3801 Barrett Drive, Suite 204
Raleigh, North Carolina 27609
Phone: (919) 783-5995

Web: <http://www.lwvnc.org/>
Email: lwvnc@mindspring.com

N.C. Sierra Club

112 South Blount Street
Raleigh, NC 27601
(919) 833-8467

Web: <http://nc.sierraclub.org/sierra-nc.asp>
Email: info@sierraclub-nc.org

N.C. Waste Awareness and Reduction Network (NCWARN)

P.O. Box 61051
Durham, NC 27715
(919) 416-5077

Web: <http://www.ncwarn.org/>
Email: ncwarn@ncwarn.org

N.C. Wildlife Federation

1024 Washington St.
Raleigh, NC 27605
(919) 833-1923
(800) 264-NCWF

Web: <http://www.ncwf.org/>

Pamlico-Tar River Foundation (PTRF)

P.O. Box 1854
Washington, NC 27889
(252) 946-9492

Web: <http://www.ptrf.org/>
Email: info@ptrf.org

Penderwatch and Conservancy

P.O. Box 662
Hampstead, NC 28443
(910) 270-9497

Contact: Don Ellson, ellsond@bellsouth.net

Roanoke-Chowan Wildlife Club

P.O. Box 707
Winton, NC 27986
Contact: Earl Edwards, (252) 357-0639

Society for Masonboro Island

P.O. Box 855
Wrightsville Beach, NC 28480
(910) 256-5777

Southeastern NC Waterman's Association

P.O. Box 0015
Sneads Ferry, NC 28460-0015
(910) 327-1231

Southern Environmental Law Center (SELC)

200 West Franklin St., Suite 330
Chapel Hill, NC 27516-2559
(919) 967-1450

Web: http://www.southernenvironment.org/States/state_nc.shtml

Email: selcnc@selcnc.org

Student Environmental Action Coalition (SEAC)

P.O. Box 31909
Philadelphia, Pa. 19104
(215) 222-4711

Web: <http://www.seac.org/index.shtml>

Southeast contact: Jason Fults, jason@seac.org

Sunset Beach Taxpayers

1210 E. Main St.
Sunset Beach, NC 28468
Contact: Minnie Hunt

Western North Carolina Alliance

29 N. Market St., Suite 610
Ashville, NC 28801
(704) 258-8737

Web: <http://www.wnca.org/index.shtml>

Email: info@wnca.org

Appendix 3

Agencies That Review CAMA and CORPS 404 Permits

Note: many proposed projects require both CAMA and 404 permits, therefore, all the following agencies review the project.

AGENCY	CAMA	404
Director N.C. Division of Water Quality 1617 Mail Service Center Raleigh, NC 27699-1617 (919) 733-5083	Yes	Yes
Director N.C. Division of Air Quality 3800 Barrett Drive PO Box 27687 Raleigh, NC 27611 919/571-4700 email: ernie.fuller@ncmail.net	Yes	Yes
Director N.C. Division of Coastal Management 151-B Hwy. 24 Hestron Plaza II Morehead City, NC 28557 (252) 808-2808 Email: DCMFrontdest@ncmail.net	Yes	Yes
Director N.C. Division of Marine Fisheries 3441 Arendell St. Morehead City, NC 28557 (252) 726-7021	Yes	No
Shellfish Sanitation Section Marine Fisheries Building P.O. Box 769 Morehead City, NC 28577-0769 (252) 726-6827	Yes	Yes
N.C. Wildlife Resources Commission P.O. Box 118 Northside, NC 27564 (919) 528-9886	Yes	No

AGENCY	CAMA	404
N.C. Division of Land Resources 512 North Salisbury Street P.O. Box 27687 Raleigh, NC 27627 (919) 733-4574	Yes	No
U.S. EPA, Region 4 Wetlands Section 61 Forsythe St., SW Atlanta, GA 30303 (404) 562-4300	No	Yes
U.S. Fish and Wildlife Service P.O. Box 33726 Raleigh, NC 27636 (919) 856-4520 email: r4fwe_ranc@mail.fws.gov	No	Yes
NOAA/National Ocean Service Center for Coastal Fisheries Habitat Research at Beaufort 101 Pivers Island Road Beaufort, NC 28516-9722 (252) 728-3595 email: ron.sechler@noaa.gov	No	Yes
U.S. Army Corps of Engineers P.O. Box 1890 Wilmington, NC 28402-1890 (910) 251-4511	Yes	Yes
N.C. Division of Soil and Water Conservation 1614 Mail Service Center Raleigh, NC 27699-1614 (919) 733-2302	Yes	No

Appendix 4

Agency Contacts to Report Possible Violations

EMERGENCY MANAGEMENT DIVISION – Contact at any time about any pollution emergency that needs immediate action.

Phone Number: (800) 858-0368

DIVISION OF WATER QUALITY (DWQ) – Contact about water or groundwater pollution.

Phone Number: (919) 733-7015

Address: 512 N. Salisbury St.
Raleigh, NC 27604

Web Page: <http://www.h2o.state.nc.us>

DWQ Regional Offices for the Coast:

Wilmington Office (Brunswick, Carteret, Columbus, Duplin, New Hanover, Onslow, and Pender counties):

Phone Number: (910) 395-3900

Address: 127 Cardinal Drive Extension
Wilmington, NC 28405-2845

Washington Office (Beaufort, Bertie, Camden, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Jones, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Pitt, Tyrell, Washington, and Wayne counties):

Phone Number: (252) 946-6481

Address: 943 Washington Square Mall
Washington, NC 27889

DIVISION OF AIR QUALITY (DAQ)

Phone Number: (919) 733-3340

Address: 512 N. Salisbury St.
Raleigh, NC 27604

Web: <http://daq.state.nc.us/>

DAQ Regional Offices for the Coast:

Wilmington Office (Brunswick, Carteret, Columbus, Duplin, New Hanover, Onslow, and Pender counties):

Phone Number: (910) 395-3900
Address: 127 Cardinal Drive Extension
Wilmington, NC 28405

Washington Office (Beaufort, Washington, Camden, Chowan, Craven, Currituck, Wayne, Dare, Bertie, Greene, Hertford, Hyde, Jones, Martin, Lenoir, Gates, Pamlico, Pasquotank, Perquimans, Pitt, and Tyrell counties):

Phone Number: (919) 946-6481
Address: 943 Washington Square Mall
Washington, NC 27889

DIVISION OF COASTAL MANAGEMENT (DCM) – Contact about construction in and around coastal waters, including beachfront, or estuarine shorelines, or activities in designated Areas of Environmental Concern:

Phone Number: (252) 808-2808
(888) 912-CAMA (2262)
Address: Director
Division of Coastal Management
151-B Hwy. 24
Hestron Plaza II
Morehead City, NC 28557
Email: DCMFrontdesk@ncmail.net
Web Page: <http://dcm2.enr.state.nc.us>

DCM Regional Offices for the Coast:

Morehead City office (Carteret, Craven, Pamlico counties; Onslow County north of the New River):

Phone Number: (252) 808-2808
(888) 912-CAMA (2262)
Address: Division of Coastal Management
151-B Hwy. 24
Hestron Plaza II
Morehead City, NC 28557

Contact: Tere Barrett, District Manager
Tere.Barrett@ncmail.net

Washington office (Beaufort, Bertie, Hertford, Hyde, Tyrrell, and Washington counties):

Phone Number: (252) 948-0478

Address: Division of Coastal Management
943 Washington Square Mall
Washington, NC 27889

Contact: Terry Moore, District Manager
Terry.Moore@ncmail.net

Elizabeth City office (Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties):

Phone Number: (252) 264-3723

Address: Division of Coastal Management
1367 US 17 South
Elizabeth City, NC 27909

Contact: Ted Sampson, District Manager
Ted.Sampson@ncmail.net

Wilmington office (New Hanover and Pender counties, Onslow County south of the New River, and Topsail Island):

Phone Number: (910) 395-3900

Address: Division of Coastal Management
127 Cardinal Drive Ext.
Wilmington, NC 28405-3845

Contact: Jim Gregson, District Manager
E-mail: Jim.Gregson@ncmail.net

U.S. ARMY CORPS OF ENGINEERS (CORPS) – Contact about dredging or filling activity in water or wetlands, or land clearing in wetlands.

Phone Number: (910) 251-4640

Address: U.S. Army Corps of Engineers
P.O. Box 1890
Wilmington, NC 28402-1890

Web Page: <http://www.saw.usace.army.mil>

DIVISION OF LAND RESOURCES (DLR) – Contact about construction sites without adequate sediment controls and about mining operations.

Address: 512 North Salisbury Street
P.O. Box 27687
Raleigh, NC 27611-7687

Web Page: <http://www.dlr.enr.state.nc.us>

Sedimentation/Erosion Control

Phone Number: (919) 733-4574

Contact: Gray Hauser, state sediment specialist
Gray.Hauser@ncmail.net

Mining

Phone Number: (919) 733-4574
Floyd Williams, state mining specialist
Floyd.Williams@ncmail.net

ATTORNEY GENERAL'S OFFICE

Phone Number: 919/716-6400

Address: NC Office of the Attorney General
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

Email: agjus@mail.jus.state.nc.us

Appendix 5

THE 20 COASTAL COUNTIES THAT ARE REGULATED BY THE COASTAL AREA MANAGEMENT ACT (CAMA)

Beaufort	Hertford
Bertie	Hyde
Brunswick	New Hanover
Camden	Onslow
Carteret	Pamlico
Chowan	Pasquotank
Craven	Pender
Currituck	Perquimans
Dare	Tyrrell
Gates	Washington

Appendix 6

Glossary of Abbreviations

AEC	Area of Environmental Concern
A/P STUDY	Albemarle Pamlico Estuarine Study
CAMA	Coastal Area Management Act
Corps	U.S. Corps of Engineers
CRC	Coastal Resources Commission
DCM	Division of Coastal Management
DEM	Division of Environmental Management
DLR	Division of Land Resources
DMF	Division of Marine Fisheries
EIS	Environmental Impact Statement
EMC	Environmental Management Commission
EPA	Environmental Protection Agency
NPDES	National Pollution Discharge Elimination System
USFWS	U.S. Fish and Wildlife Service
WRC	Wildlife Resources Commission