

§ 113A-115.1. Limitations on erosion control structures.

(a) As used in this section:

- (1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.
- (1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).
- (2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.
- (3) "Terminal groin" means one or more structures constructed at the terminus of an island or on the side of an inlet, with a main stem generally perpendicular to the beach shoreline, that is primarily intended to protect the terminus of the island from shoreline erosion and inlet migration. A "terminal groin" shall be pre-filled with beach quality sand and allow sand moving in the littoral zone to flow past the structure. A "terminal groin" may include other design features, such as a number of smaller supporting structures, that are consistent with sound engineering practices and as recommended by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes. A "terminal groin" is not a jetty.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This subsection shall not apply to any of the following:

- (1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to July 1, 2003.
- (2) Any permanent erosion control structure that was originally constructed prior to July 1, 1974, and that has since been in continuous use to protect an inlet that is maintained for navigation.
- (3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission prior to July 1, 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(c1) The Commission may authorize the repair or replacement of a temporary erosion control structure that was originally permitted prior to July 1, 1995, if the Commission finds that (i) the structure is located adjacent to an intertidal marine rock outcropping designated by the State as a Natural Heritage Area pursuant to Part 42 of Article 2 of Chapter 143B of the General Statutes and (ii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to this section.

(e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the following to the Commission:

- (1) Information to demonstrate that structures or infrastructure are threatened by erosion.
- (2) An environmental impact statement that satisfies the requirements of G.S. 113A-4. An environmental impact statement prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., for the construction of the terminal groin shall satisfy the requirements of this subdivision.
- (3) A list of property owners and local governments that may be affected by the construction of the proposed terminal groin and its accompanying beach fill project and proof that the property owners and local governments have been notified of the application for construction of the terminal groin and its accompanying beach fill project.
- (4) A plan for the construction and maintenance of the terminal groin and its accompanying beach fill project prepared by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.
- (5) A plan for the management of the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet. The inlet management plan monitoring and mitigation requirements must be reasonable and not impose requirements whose costs outweigh the benefits. The inlet management plan is not required to address sea level rise. The inlet management plan shall do all of the following relative to the terminal groin and its accompanying beach fill project:
 - a. Describe the post-construction activities that the applicant will undertake to monitor the impacts on coastal resources.
 - b. Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated.
 - c. Provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan.
 - d. Provide for modification or removal of the terminal groin if the adverse impacts cannot be mitigated.
- (6) Proof of financial assurance verified by the Commission or the Secretary of Environmental Quality in the form of a bond, insurance policy, escrow account, guaranty, local government taxing or assessment authority, a property owner association's approved assessment, or other financial instrument or combination of financial instruments that is adequate to cover the cost of implementing all of the following components of the inlet management plan:
 - a. Long-term maintenance and monitoring of the terminal groin.
 - b. Implementation of mitigation measures.
 - c. Modification or removal of the terminal groin.
 - d. Repealed by Session Laws 2013-384, s. 3(a), effective August 23, 2013, and applicable to permit applications submitted on or after that date.

(f) The Commission shall issue a permit for the construction of a terminal groin if the Commission finds no grounds for denying the permit under G.S. 113A-120 and the Commission finds all of the following:

- (1) The applicant has complied with all of the requirements of subsection (e) of this section.
- (2) Repealed by Session Laws 2013-384, s. 3(a), effective August 23, 2013, and applicable to permit applications submitted on or after that date.
- (3) The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.
- (4) Construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach. In making this finding, the Commission shall take into account the potential benefits of the project, including protection of the terminus of the island from shoreline erosion and inlet migration, beaches, protective dunes, wildlife habitats, roads, homes, and infrastructure, and mitigation measures, including the accompanying beach fill project, that will be incorporated into the project design and construction and the inlet management plan.
- (5) The inlet management plan is adequate for purposes of monitoring the impacts of the proposed terminal groin and mitigating any adverse impacts identified as a result of the monitoring.
- (6) Except to the extent expressly modified by this section, the project complies with State guidelines for coastal development adopted by the Commission pursuant to G.S. 113A-107.

(g) The Commission may issue no more than six permits for the construction of a terminal groin pursuant to this section, provided that two of the six permits may be issued only for the construction of terminal groins on the sides of New River Inlet in Onslow County and Bogue Inlet between Carteret and Onslow Counties.

(h) A local government may not use funds generated from any of the following financing mechanisms for any activity related to the terminal groin or its accompanying beach fill project:

- (1) Special obligation bonds issued pursuant to Article 7A of Chapter 159 of the General Statutes.
- (2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).
- (3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.

(i) No later than January 1, 2019, and every five years thereafter, the Coastal Resources Commission shall report to the Environmental Review Commission on the implementation of this section. The report shall provide a detailed description of each proposed and permitted terminal groin and its accompanying beach fill project, including the information required to be submitted pursuant to subsection (e) of this section. For each permitted terminal groin and its accompanying beach fill project, the report shall also provide all of the following:

- (1) The findings of the Commission required pursuant to subsection (f) of this section.
- (2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.
- (3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.
- (4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts. (2003-427, s. 3; 2004-195, s. 1.2; 2004-203, s. 43; 2011-387, s. 1; 2012-201, s. 2(a); 2013-384, s. 3(a); 2015-241, ss. 14.6(r), 14.30(v); 2017-10, s. 4.19; 2018-114, s. 15; 2020-3, s. 4.30(b).)