

**POLICY RECOMMENDATIONS
CONCERNING SALVAGING
SUBMERGED LOGS IN THE WATERS
OF EASTERN NORTH CAROLINA**

By

Submerged Log Salvage Policy Development Team

*Submitted to
North Carolina Department of Environment and Natural Resources*

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TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	ii
INTRODUCTION.....	1
MEETINGS.....	2
HISTORY.....	3
STATE MANAGEMENT APPROACHES.....	5
FINDINGS.....	9
RECOMMENDATIONS.....	13
CONCLUSION.....	17
BIBLIOGRAPHY.....	18
LIST OF APPENDICES.....	20

LIST OF TABLES

TABLE 1	ISSUES OF CONCERN IDENTIFIED BY THE TEAM.....	9
TABLE 2	RECOMMENDED BEST MANAGEMENT PRACTICES.....	15
TABLE 3	RECOMMENDED OPERATIONAL CONDITIONS.....	16

EXECUTIVE SUMMARY

A Submerged Log Salvage Policy Development Team was created by the North Carolina Department of Environment and Natural Resources (DENR) in October 1999 in response to growing commercial interest to salvage sunken old growth logs from North Carolina waters. The team consisted of members of DENR agencies, other State agencies and one environmental advocacy group. Representatives of current log salvaging businesses regularly attended meetings. The team was chaired by the Director of the Division of Coastal Management and completed its work in June 2000.

The charge to the team consisted of (1) identifying potential adverse environmental impacts of salvaging submerged cut logs from North Carolina's rivers, streams, and sounds and (2) developing policy recommendations that would minimize adverse effects to aquatic ecosystems.

The team reviewed management approaches in other states and available studies about log salvaging and developed a list of critical issues. Though studies evaluating log salvage effects on aquatic systems are limited in scope, evidence suggests that log salvaging may be detrimental to aquatic habitats and fish communities by removing woody habitat important as cover and invertebrate food production, altering substrates and sensitive habitats, increasing sedimentation and turbidity, and degrading water quality by disturbing contaminated sediments. The importance of maintaining habitat quality in coastal rivers, streams, and sounds that support multi-million dollar recreational and commercial fisheries necessitates that log salvage be thoroughly evaluated and permitted actions are approached conservatively.

The primary recommendation of the team is that a comprehensive or programmatic environmental impact statement (EIS) be prepared by DENR on submerged log salvage operations in the public trust waters of eastern North Carolina. The team concluded that impacts of log salvaging could best be addressed on a regional scale in North Carolina in consideration of the variety of our aquatic habitats and diversity of aquatic resources.

Additional recommendations to DENR are:

- The Secretary of DENR should adopt the best management practices (BMPs) and operational conditions developed by the team until appropriate policies can be implemented based on the completed programmatic EIS.
- The recommendations of the team and the proposed programmatic EIS should address submerged log salvaging activities east of the fall line due to the abundance of public trust waters and potential for submerged log salvaging in this region.

- As an interim measure, the Secretary should waive the preparation of environmental assessments on individual log salvage operations for any permit applicant that agrees to comply with the recommended interim BMPs and operational conditions.
- The Division of Coastal Management (DCM) should attach the appropriate BMPs and operational conditions to each CAMA (Coastal Area Management Act) permit issued pursuant to CAMA from the list of recommended operational conditions based on requests by resource agencies.
- DENR agencies should prepare a guidance document to inform permit applicants of the various requirements that must be fulfilled before receiving a permit(s).
- The Secretary of DENR should send a copy of this report to the Secretary of the Department of Cultural Resources (DCR) with the request that the recommended operational conditions be applied as appropriate to the DCR permits issued in State waters outside of CAMA jurisdiction.
- The Secretary of DENR should contact the U.S. Army Corps of Engineers (COE) to request that the COE assume jurisdiction over log salvage operations under Section 404 of the Clean Water Act administered by the COE to assure adequate review of proposed projects in all public trust waters of eastern North Carolina.

A major concern of team members was the question of submerged log ownership. Although there has not been an official legal opinion regarding ownership of the logs, nor has the ownership issue been litigated in North Carolina, it is the opinion of attorneys in the Attorney General's Office involved with this issue that submerged logs are State-owned artifacts, as defined in N.C.G.S. 121-22. The rationale is that the logs became personal property once they were severed from the land and floated downstream. After sinking beneath the State's public trust waters, they have lain unclaimed on the bottom of the State's navigable waters for more than ten years. A related issue is whether the State is due compensation from the salvagers of submerged logs. It appears that either DCR or the State Property Office could require one or all these forms of compensation: fees, royalties, or relinquishment to the State of a portion of the artifacts. At this time, neither agency appears interested in collecting compensation. There is no authority for DENR to require compensation other than through the usual permit application fee requirement.

There are two statutes that currently control log salvaging activities in waters of the State. N.C.G.S. 121-21 through 121-28, "Salvage of Abandoned Shipwrecks and Other Underwater Archaeological Sites," requires a permit (renewable annually) issued by DCR's Underwater Archaeology Unit. For projects located in waters of the 20 coastal counties subject to N.C.G.S. 113A-100 *et seq.* (the Coastal Area Management Act), DENR's Division of Coastal Management issues permits that may be renewed after three years. There is no authority for the Underwater Archaeology Unit to either add environmental conditions to its

permits or monitor the salvaging activities for environmental impacts. CAMA permits, on the other hand, can have environmental conditions that reflect the environmental needs of the water body where salvaging occurs. DCR permits give exclusive salvaging rights in specific geographical areas of the water body, while CAMA does not authorize exclusive salvaging rights.

There are currently three permitted log salvaging operations in eastern North Carolina. Two of the operations were permitted through both DCR and DCM, and both operations prepared environmental assessments (EA) pursuant to the North Carolina Environmental Policy Act (NCEPA). The third operation was permitted only by DCR and was not required to prepare an EA. Both DCR and DCM issued permits to the Riverwood Company (now known as the Cape Fear Riverwood Co.) in 1997 for three salvage sites in the Northeast Cape Fear River. The CAMA permit did not include a seasonal moratorium nor required the use of a silt curtain. DCR and DCM permitted the Lost & Found Lumber Company for four sites in the Perquimans River in 1999. This operation has seasonal moratoriums and other conditions designed to protect the State's public trust resources, and requires use of a turbidity curtain during some of the operations. Al and Greg Purdy are to begin salvaging in inland waters in Devil's Gut in Martin County upstream of CAMA jurisdiction during the fall of 2000. Although it remains questionable whether environmental conditions or a seasonal moratorium for fish spawning/nursery areas can be enforced under a DCR permit, the Purdy's permit contains a seasonal moratorium and a prohibition on salvaging in areas with submerged aquatic vegetation.

INTRODUCTION

There has been an increased commercial interest in salvaging sunken saw logs that were originally harvested 100 or more years ago. Currently, commercial operations harvest submerged logs in several states and Canada. The interest in salvaging submerged logs in North Carolina's rivers created concern about appropriate levels of environmental review and permitting procedures within the North Carolina Department of Environment and Natural Resources (DENR). Additionally, the Wildlife Resources Commission and the Marine Fisheries Commission notified the Secretary of DENR of their concern about possible negative impacts to fisheries resources from log salvaging activities in North Carolina's public trust waters.

Although DENR wanted to ensure that any activities that occur in State waters are not detrimental to the health of the environment, there are no policy guidelines concerning log salvaging operations. To fill this policy gap, DENR senior management asked the Division of Coastal Management (DCM) to form a team to determine the issues of concern and how to address them, and to make policy recommendations to the DENR senior management. Donna Moffitt, Director of DCM, served as chairperson of the team and was assisted by Kelly Rudd, facilitator and lead staff person for the team. They contacted various agencies that had shown interest in the issue. The following State and federal agencies were represented on the team to develop policy recommendations:

- DENR —Division of Coastal Management (DCM)
- DENR —Division of Marine Fisheries (DMF)
- DENR —Division of Water Quality (DWQ)
- DENR —Division of Forest Resources (DFR)
- Wildlife Resources Commission (WRC)
- Department of Justice —Attorney General's Office (AGO)
- Department of Administration—State Property Office (SPO)
- Department of Cultural Resources (DCR) — Office of State Archaeology
- Department of Cultural Resources — Underwater Archaeology Unit (UAU)
- Department of Cultural Resources —State Historic Preservation Office (SHPO)
- US Fish and Wildlife Service

The North Carolina Department of Commerce was invited to participate, but did not respond to the team's invitation. A member of the North Carolina Coastal Federation was also invited to be a member of the policy recommendation team. (See Appendix A for a complete list of members.) Citizens, log salvaging companies/groups, environmental interest groups, private property owners, and local governments were notified of the meetings through the Coastal Area Management Act (CAMA) newsletter and an interested parties mailing. Vance

Chamberlin and Frank Taylor with Cape Fear Riverwood Corp., and Al and Greg Purdy were valuable participants in the process. These men regularly attended the meetings and provided pertinent information to the team. Robert & Jonathan White, owners of Lost & Found Lumber Co., contributed to the team's effort with both oral and written comments. (See Appendix B for a list of non-team participants.)

The charge to the team consisted of (1) identifying potential adverse environmental impacts of salvaging submerged cut logs from North Carolina's rivers, streams, and sounds, and (2) developing policy recommendations that would minimize adverse effects to aquatic ecosystems.

Based on concerns of review agencies during the first two permitted log salvage applications (1996 and 1998), the following items were noted as key issues of team members:

- Potential impacts on the aquatic environment (fisheries habitat, water quality, and spawning and nursery areas)
- Regulatory issues
- Monitoring and evaluation issues
- Lack of information about the effects of log salvaging.

MEETINGS

Ten meetings were held beginning on November 2, 1999. Minutes of these meetings are provided in Appendix C. Various individuals and organizations potentially interested in submerged log salvaging were identified and received an informational mailing and invitation to participate. Interested non-governmental parties were invited to the meetings and time was allotted on the agenda for public comment. Various people and organizations were identified and these people received a mailing to bring them up-to-date on the issue and an invitation for their participation. (See Appendix D.)

The team discussed and created a list of issues of concern at the first meeting (see Table 1 on page 9). Additionally, the team created two subcommittees. One subcommittee developed proposed best management practices (BMPs) and the other subcommittee addressed potential cumulative and secondary impacts. The two subcommittees were subsequently combined, and they prepared a list of recommended BMPs and operational conditions.

The second meeting on December 2 was held in Wilmington. The team met at the Cape Fear River at the unloading site of the currently permitted log salvaging operations of the Cape Fear Riverwood Corporation, owned and operated by Vance Chamberlin and Frank Taylor, who described company operations. The formal meeting was held in the DENR Wilmington Regional Office following the tour of Riverwood's facilities. At this meeting the team prioritized the list of

issues, determining which issues were most important to be addressed by the team.

Six additional meetings were held from December 1999 to March 2000, at which issues were developed, discussed, and prioritized and interim recommendations developed. An additional meeting was added for April 11 to finalize decisions and to review the recommendations. The last meeting, to finalize the team report, was held June 21, 2000.

HISTORY

Salvaging old-growth sunken logs is a relatively new issue for North Carolina. Log salvaging operations occur in neighboring states in the south, states surrounding the Great Lakes, and in Canada. Logging operations in North Carolina in the late 1800s and early 1900s cut virgin timber and typically floated the logs down a river to the mill site. Log rafting, while occurring in waters across the state, was prominent in the coastal plain. Logs were frequently tied together to form a raft, but many logs were lost during their travel downstream. Logs that were separated from the raft, whether due to narrow areas in the river or getting caught on bank debris or logjams, sank to the bottom of rivers. Many logs also fell overboard from barges. Over the many years that these logs rested on the rivers' bottoms, the wood has not deteriorated. This virgin timber has very narrow growth rings, a situation that is uncommon in today's lumber. The tightness of the growth rings and the types of trees that were cut are quite valuable on the specialty lumber market today.

According to the Cape Fear Riverwood Corp.'s research, approximately 18 percent of all logs that were floated downstream for processing were lost during transport. These logs sunk to the bottom of the rivers and have been preserved over time due to cool water temperatures and, for those logs buried under sufficient sediment, anaerobic conditions. "The timber is perfect for restoration projects, remakes of antique furniture lines and musical instruments with unparalleled acoustic properties" (Post, 2000).

In North Carolina, methods such as diving surveys, sonar graphs, side-scan sonar surveys, and substrate profiling are used to determine where the logs are located. Log concentrations are usually found in bends in the rivers and where old saw mills were located. Log concentrations may appear as a mound on the bottom (for an example of a drawing from a side-scan sonar map, see Appendix E). The Cape Fear Riverwood Corp. has found that log piles in the Cape Fear River are typically covered with a layer of muck, and divers must probe the bottom with a pipe to determine if the mound contains logs. Log concentrations deemed worthy of retrieval are then flagged. The survey crew notifies the salvaging crew of the location and concentration of logs. A boat and barge go to the site, and the crew begins removing the logs. The Cape Fear Riverwood Corp. uses a barge with a 30-ton capacity crane with a grapple. The logs are placed

on the barge for transport to the sawmill. The majority of the logs that this operation has retrieved are southern yellow pine and cypress. The methods used to locate the log mounds are common to most log salvaging operations around the United States.

A method that another permitted North Carolina log salvager uses includes the use of lift bags, which appear to be more “environmentally friendly.” A diver attaches the lift bag to the log, pulls a release cord, and the bag is inflated. The logs then quickly rise from the bottom causing little disturbance. The logs are placed aboard a small skiff and transported to the shore.

The method used by the third permitted operation involves a diver attaching retrieval collars or eye bolts to each log. A winch located onboard a small watercraft will bring the logs to the surface. The logs will be securely attached to sled type device and taken to shore behind the small watercraft.

It is likely that informal removal of submerged logs without being permitted has occurred throughout North Carolina for many years. The earliest submerged log salvage permit issued by DCR is believed to be the McEntire permit. Copies of the permits authorizing the three current operations in the State and the earlier McEntire operation are found in Appendices F - I.

In 1992 a DCR permit was issued to recover submerged logs and other “non-structural wood” in the Northeast Cape Fear and Cape Fear Rivers upriver of Wilmington to Dr. Cary McEntire of Wilmington. The permit was renewed for an additional year in 1993 and only a few logs were recovered according to Richard Lawrence with DCR’s Underwater Archaeology Unit (UAU). It is believed that a CAMA permit was neither applied for nor issued.

Sometime in 1992, Dr. McEntire sought a contract with the State to clear out logs that comprised old wharf and associated mooring pilings along the Cape Fear River in the vicinity of downtown Wilmington and for some distance north and south of the City’s waterfront. Dr. McEntire operated a business that sold recovered logs to other business concerns, mostly in Europe, that sawed the logs into flooring, panelling, and other products used in finishing construction and the restoration of building interiors. Apparently Dr. McEntire believed that the pilings, while worthless from a wood recycling standpoint, were potentially quite valuable to him as an old wood supplier because most of the pilings were made of heartwood longleaf pine. After significant discussions among State resource agencies, the Attorney General’s Office and DCR’s UAU, it was decided not to issue permits or State contracts to Dr. McEntire for recovering old wharf and associated mooring pilings in the Cape Fear River along the Wilmington waterfront.

STATE MANAGEMENT APPROACHES

Concern about the potentially negative effects of log salvaging operations on fisheries habitat and spawning areas for anadromous and resident fish species during extraction of submerged logs from public waters has grown concurrent with the increased interest in log salvage. A review of states involved in the log salvaging process was completed and included Minnesota, Florida, Wisconsin, Georgia, and Michigan. Canadian operations were also reviewed. The following information is summarized by state.

MINNESOTA: The Minnesota submerged log salvage framework was completely revamped in 2000 in Chapter 103G, Section 650, "Recovering Sunken Logs on Inland Waters." However, logging has yet to occur under either the previous statutory scheme or the current one (Hubred, 2000). The Minnesota Department of Natural Resources reviews applications under a 60-day review process and determines whether to issue a three-year lease for logging underwater. The new statute defines logs submerged for at least a year as abandoned property. The commissioner is required to bill the lessee for the value of the recovered logs based on a rate of 25 percent of the weighted average selling price for all logs sold from state lands for the preceding 12 months.

The statutory conditions on log salvaging are as follows:

- Logging can occur only in lakes wholly within the state's borders and only in water depths of 20 feet or more, and must commence within one year of issuance of a lease
- Only one lease per lake; only three leases per lessee at the same time
- Removal of submerged logs must be by winching; air pillows or lift bags and other removal techniques are not allowed
- Recovered logs containing tribal marks (such as stamps) requires notification by the lessee to the nearest tribal government within five business days
- The state Historic Preservation Office must be notified by the lessee at least five days prior to the start of the operation and that office must be allowed access to all parts of the operation
- Lessee must hold a general liability insurance policy naming the state as a coinsured party.

(Office of Revisor of Statutes, State of Minnesota, 2000)

The first three leases have been issued for three separate lakes. Each project will be monitored by the state for a period of two years to determine what aquatic impacts occur during the operations (Hubred, 2000).

FLORIDA: Florida placed a moratorium on log salvaging in 1974 after the Florida Game and Freshwater Fish Commission expressed concerns about the effects of the practice on fisheries habitat (Arndorfer, 1999). Because of legal claims to branded logs, value of submerged logs, and continued illegal harvest,

the Department of Natural Resources decided to again permit log salvaging pending the results of a one-year study by the Florida Department of Environmental protection (FDEP) evaluating log recovery effects. The permit rules included:

- Logs may not be dragged on the river bottom or removed from the water by pulling them up the bank
- Logs must be lifted and carried to a permitted public or private boat ramp for removal
- Loggers are allowed to take only precut timber and not “dead-fall” timber.

The study (FDEP, 1999) mapped snag habitat in the Apalachicola and Choctawhatchee Rivers and found the percent of visible snags was very low (approximately one percent) in comparison to other southeastern rivers, which may contain 40 percent snags. The study recommended that snag habitat be enhanced in rivers containing little woody material. The study also recommended that fresh snags be used to replace logs removed by salvagers.

WISCONSIN: The Wisconsin Board of Commissioners of Public Lands is responsible for accepting and ensuring appropriate review of submerged log salvage permit applications, and acting within 60 days of receipt of an application. The Board must send the application to the Department of Natural Resources (DNR) and to the historical society for a 30-day review and comment period. Issued permits are effective for five years. Wisconsin reserves to itself 30 percent of the stumpage value, as established by the DNR. Because submerged logs are considered unclaimed property, portions of revenues from this logging activity must be deposited into the Common School Trust Fund, used to support public education, according to Wisconsin law.

The issued permit must contain, among other things (1) a statement about the frequency, means and procedure for accounting for and determining the appraised market value of any logs raised, and (2) that the applicant shall implement procedures to determine whether a raised log bears an American Indian tribal mark or brand, to identify the tribal mark or brand, and to track the value realized from the sale of logs separately for logs that bear a particular tribal mark or brand.

Relevant Wisconsin application requirements are:

- Provide sonar graphs, video, a written report and any known information on archaeological or historical materials which lie in the permit area
- Post a performance bond of at least \$10,000 and pay a \$500 application fee.

(Wis. Stat. Chapter 170.12, Office of Wisconsin Revisor of Statutes, 1999)

GEORGIA: In November 1998, the Commissioner of the Georgia Department of Natural Resources (DNR) issued an Administrative Order banning the removal of

commercially harvested logs until a task force could further examine the impact of these activities. Results of the task force study have not been released.

A task force was appointed consisting of local, state, and federal government personnel as well as private citizens to study this issue. The Administrative Order stated, "During 1999, the group will gather information and hold public hearings on the removal of sunken logs. They will consider water quality, property ownership, fish and invertebrate habitat, boating safety, procedures for permitting, and procedures for selling commercially harvested logs which are state property or in state custody."

"Currently, people who want to remove commercially harvested logs from Georgia's waterways must obtain a U.S. Army Corps of Engineers' Section 10 permit and a DNR, Environmental Protection Division (EPD) Section 401 water quality certification. While this permitting process is intended to address water quality issues, it does not take into consideration other environmental concerns. EPD will not issue any Section 401 permits to remove sunken logs until the task force submits a final report to [the] Commissioner in November 1999." (Georgia DNR, Nov. 9, 1998)

MICHIGAN: Michigan recognizes original ownership of logs based on log marks and that ownership can only legally be changed by the sale or transfer of the title to the log mark or as otherwise provided by law. Michigan has reports of ownership of logs in respective rivers and counties. The courts ruled that riparian landowners have no title to the logs in the stream as an incident of ownership of the abutting land. The following statement pertains to logs with marks of ownership and salvaging underwater logs.

"The state constitution prohibited the expenditure of public funds for internal improvements excepting highways. Statutes were, therefore, enacted to permit the formation of log-booming and stream improvement companies. As a number of logging operators used the same stream, statutes also were provided to require each log-owner to submit a log mark to the local river booming company to be registered under the owner's name and recorded in each county where the logs were cut or through which they would pass on the way to the mill. Under this provision, the ownership of a log could be determined and unmarked logs became the property of the boom company."

The report concluded that the actual [environmental] effect following the removal of sunken logs cannot be correctly appraised as much depends upon how the salvage operations are conducted and also as to how thoroughly the logs are removed. To determine the effects it would be necessary to have a record of the stream characteristics and fish population before, during, and after such operations and also similar data during the same period on a stream of comparable characteristics on which no such work was done. (Interoffice

communication (Sept. 3, 1971) from Michigan Department of Natural Resources to unknown person.)

CANADA: A Canadian study reviewed the loss of structural habitat for fish and invertebrates; spawning; health and behavior of the aquatic environment; water quality, including phosphorus levels, temperature, and oxygen levels; and simulated effects of disturbing sediment (Smokorowski, *et al.*, 1999). The study listed the following concerns about log removal from streams: downstream settling of re-suspended sediment, stream morphology changes, physical and behavioral effects on fishes, and alteration of substrates for macroinvertebrate production. The study used models to predict the reduction of lake dissolved oxygen levels following variable levels of sediment disturbance to simulate log recovery effects. The report concluded that “lake size, morphometry, available oxygen, type of sediment, species of fish present, and time of year of the disturbance are parameters that are important to consider for log salvaging” (Smokorowski, *et al.*, 1999). In addition the authors felt that the changes in lake oxygen regimes were one of the most serious impacts of log recovery. As the Canadian study was based on cold-water lakes, it may be of limited relevance to log recovery in North Carolina waters.

A 1998 Canadian workshop examined log salvage from aquatic habitats (Cuddy, *et al.*, in press). The report concluded that potential impacts of log recovery are dependent on many factors, including salvage technique and site-specific conditions, and that the decision process is difficult and complex. The study recognized the importance of woody debris as refugia for small fish, providing habitat complexity, increasing invertebrate production important as food for fish, and providing shoreline stability. Potential adverse effects from re-suspending contaminated sediments and turbidity were also of concern.

NORTH CAROLINA: North Carolina does not have legislation directly addressing either ownership of sunken logs or environmental standards for salvaging old-growth sunken logs; however, the State clearly asserts ownership of the logs (see Appendix J). Two State agencies, DCM and DCR, issue permits for log recovery. DCM’s permit regime is described in Appendix K and DCR’s permit regime is described in Appendix L. Under the CAMA, DCM issues development permits in 20 coastal counties. The DCR permits are statewide in scope and only address possible effects on cultural resources (shipwrecks and other artifacts).

Presently, DCM requires that applicants apply for a major development permit and submit an environmental assessment (EA) pursuant to the Secretary of DENR’s determination under the North Carolina Environmental Policy Act (NCEPA) that an environmental review document is warranted. The permit application is usually reviewed by nine State and four federal agencies, which can recommend approval, approval with conditions or denial of the application. DCM uses these agency recommendations, as well as administrative rules of the

Coastal Resources Commission, in issuing, conditioning, or rejecting permit applications. The permit application fee is \$400 for this activity, and the permit is good for three years without renewal unless new legislation is enacted or the permittee violates the permit conditions.

The DCR permits are limited to one year and can be renewed. The DCR allows the applicant four sites and does not permit other submerged log recovery projects to occur within those sites during the permitted time period. The DCR requires that any cultural artifact found or discovered be submitted or reported to the DCR for its investigation. The DCR also requires monthly reports of activities occurring within the permitted area. The DCR does not consider environmental concerns as part of its permitting process due to lack of legislative authority nor does it currently charge a permit application fee.

FINDINGS

The team developed an extensive list of possible issues of concern to protect the environment and public trust rights from potential negative impacts of submerged log salvaging. Table 1 shows the various issues that the team addressed.

TABLE 1. ISSUES OF CONCERN IDENTIFIED BY THE TEAM

GROUP TOPIC	ISSUE
IMPACTS ON HABITAT	Potential fisheries habitat loss
	How to quantify the number of logs providing habitats
	Submerged Aquatic Vegetation (SAV) habitat impacts
	Protection of existing uses; i.e., fisheries habitat and water supplies
	Discern whether logs are in an anaerobic setting
	Salvaging from smaller creeks that might be providing spawning and nursery areas (anadromous fish and resident species)
	Seasonal salvaging limitations
	Cumulative effects
	Hydrologic effects
PERMITTING	Monitoring permit conditions
	Pile removal/snagging vs. log salvage
	Should permits for log salvaging give an exclusive right? If so, how extensive?
	Develop use standards and BMPs
	Standardized operating conditions on permits; i.e., water depth, shoreline distance, etc.
	Extraction vs. excavation
NCEPA REVIEW	Site specific conditions per permit modification
	Programmatic EIS be required
	Appropriate amount of research to support decisions

	Various impacts of operations based on size
	More specific scope of work area
	Site specific conditions per EA addendums
	Decide who coordinates review in non-CAMA counties
WATER QUALITY	Maintain water quality standards (metals, turbidity, DO, toxins, etc.)
OWNERSHIP/COMPEN- SATION	State ownership of logs established?
	Should royalties be collected, who should collect them, and how should the royalties be used?
	Documenting extractions
MITIGATION	If fisheries or habitat are impacted, can the impact be mitigated?
PUBLIC TRUST	Log salvaging increases navigation hazards
	Use conflicts and impacts on public trust
	Impact of salvage on other cultural resources
IMPACTS ON PROPERTY	Riparian property owner rights considered
	Retrieving logs from river via public boat ramps, pulling up banks, etc.
LOCAL COMMUNITY INTERESTS	Potential positive economic impacts to local community
LOG SALVAGE INTERESTS	Perception of inconsistency among permitted activities
	Operational feasibility given proposed permit conditions

Serious information gap Very little scientific literature is available on the issue of salvaging submerged logs and the effects that removing these logs may have on the aquatic environment. Each water body has its own species community, temperatures, spawning seasons, and other variables; therefore, it is difficult to assess the impacts of log salvaging on aquatic environments.

The team identified various issues concerning salvaging submerged logs and found little information available to thoroughly evaluate the potential effects of log salvaging on North Carolina's aquatic communities, fish habitats, and fisheries economy. Several other states are also in the early evaluation stages. Most natural resource agencies, however, conclude that submerged logs increase habitat diversity and provide habitat for fish and invertebrates. The effects of log removal on fisheries habitat is likely variable and will depend upon the abundance of woody material, the proportion of the total woody debris comprised of saw logs, and the amount of material removed. Variability in habitat types, fish communities, and environmental conditions may make it difficult to extrapolate study results among different regions. It will likely take considerable time and effort to thoroughly evaluate probable log recovery effects in North Carolina.

No inland environmental permitting jurisdiction A potential way for the environmental impacts of log salvage activities outside of CAMA counties to be addressed is through the Clean Water Act (CWA), Section 404 jurisdiction of the U.S. Army Corps of Engineers (COE). If the COE claims jurisdiction over log salvage operations, that jurisdiction would apply within, as well as outside, CAMA counties. Whenever Section 404 applies, the Division of Water Quality's (DWQ) authority under Section 401 of the CWA would also apply. Thus, environmental issues for log salvage operations outside of CAMA counties would be addressed and appropriate permit conditions would be applied through the 404/401 certifications issued by the COE and DWQ.

The team determined that under the current permitting regimes, environmental issues could only be addressed during the permitting process within the 20 CAMA counties. Log salvage operations in non-CAMA counties are required to have only a DCR permit. The DCR's permitting authority covers only issues related to cultural preservation and not to environmental quality.

Currently, there are three permitted log salvage activities. Two of these operations occur in water bodies that are covered under CAMA (See Appendices F and G). The most recently permitted log salvaging operation will occur in inland waters outside CAMA jurisdiction and is permitted by DCR (See Appendix H). The team recognized the desirability of consistent permit conditions for projects within, as well as outside, CAMA jurisdiction, but also realized that individual aquatic systems may have unique values, which require different operating conditions.

Ownership of submerged logs Although there has not been an official legal opinion regarding ownership of the logs, nor has the ownership issue been litigated in North Carolina, it is the opinion of the attorneys in the Attorney General's Office involved with this issue that the submerged logs fall within the definition of State-owned artifacts as defined in N.C.G.S. 121-22. The rationale is that the logs became personal property once they were severed from the land and floated downstream, and they have lain unclaimed on the bottom of the State's navigable waters for more than ten years.

A related issue is whether the State is due compensation from the salvagers of submerged logs. It appears that either DCR or the State Property Office could require one or all the following forms of compensation: fees, royalties, or relinquishment to the State of a portion of the artifacts. At this time, neither agency appears interested in collecting compensation.

An additional consideration for compensation to the State by private submerged log salvagers is that the logs may be taxable. A representative of the Division of Forest Resources (DFR) apprised the team of the primary processor's tax authorized by the Primary Forest Products Assessment Act of 1977. This tax is

collected through the Department of Revenue and is currently designated to assist landowners in funding reforestation projects. Reallocation of funds earned through this tax toward mitigation for or monitoring of submerged log salvaging would most likely not be supported by the DFR and would require an administrative rule change.

Operational conditions and best management practices (BMPs) in lieu of preparing an EA and requiring mitigation It was suggested during the team deliberations that if a log salvager followed BMPs that an individual EA should not have to be prepared. A list of BMPs was developed to guide log salvaging activities and minimize adverse impacts of log salvaging on the environment while the recommended EIS was being prepared through DENR. Also, although mitigation of impacts seemed to be a reasonable expectation for log salvage operations, the team had no way of collecting research data on the types and effectiveness of potential mitigation efforts. Therefore, the team turned to alternative ways of dealing with mitigating potential impacts through proposed BMPs and operational conditions attached to CAMA and/or DCR permits.

In spite of the potential for BMPs to reduce impact and help salvagers avoid preparing an EA, DENR must maintain the right to require an EA in cases where the magnitude of the salvaging operation, the sensitivity of the particular area, or other valid environmental rationale would warrant a closer look prior to permitting the operation.

Reasonable application of NCEPA to log salvaging operations The purpose of a NCEPA document is to describe the project thoroughly and disclose known or potential environmental impacts for use by decision makers. (See Appendix M for a brief description of NCEPA applicability.) In implementing CAMA, the NCEPA most often becomes an issue in the permitting of structures on State-owned submerged lands. Many of those structures, such as small docks and piers, are exempt from the NCEPA under either the statutory exemptions or DENR's minimum criteria. Marinas are an example of a type of project that would not be exempt and therefore would require an environmental document based on use of State-owned submerged lands. For projects requiring an environmental document under the NCEPA, the CAMA permit application is not complete until an appropriate environmental document has been submitted (see rule 15A NCAC 7J.0204).

Even though DENR's rules implementing NCEPA do not list submerged log salvage as an action requiring an environmental document, the Secretary of DENR can require the preparation of an EA pursuant to rule 01C.0503 of Title 15A of the North Carolina Administrative Code when one of four findings are made. One of the findings includes that a proposed activity is "of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency."

Beginning with the CAMA permit application for the Cape Fear Riverwood Corp., the Secretary has required that an EA be prepared on log salvaging projects. DCM staff felt that the EA requirement places a significant burden on applicants considering that few operations are currently permitted and the lack of information regarding environmental impacts from these operations.

Because of the lack of information about the environmental effects from log salvaging operations and the lengthy time period for preparing an EIS, the team determined that implementation of BMPs by the salvage operators was a good interim approach to protecting North Carolina's public trust resources. A subcommittee of four team members was assigned to develop the draft BMPs. The four members, Bob Stroud (DCM—Chair of the subcommittee), Sara Winslow (DMF), Fritz Rohde (DMF), and Bennett Wynne (WRC), are experts in their fields and have a thorough understanding of the activities that may have impacts on fisheries habitat and how certain activities may affect anadromous and resident fish spawning and nursery areas. After several revisions by the subcommittee and the whole team, the BMP list was finalized to be recommended as the interim management approach to log salvaging until the programmatic EIS is completed.

Applicability of Dredge and Fill Act The team investigated the various methods typically used for recovering submerged saw logs. It appeared that the techniques being applied in North Carolina would not constitute excavating into the bottom material of the water bodies where the projects occur. Therefore, DCM concluded that as long as excavating equipment (buckets, dredges, etc.) was not used for recovery, then the Dredge and Fill Act would not be triggered. However if excavating the bottom material is employed in a log salvage operation in estuarine waters, tidelands, marshlands or State-owned lakes in any CAMA county or the counties of Martin, Columbus, Bladen, Halifax or Northampton, then an EA would be required.

Lack of funds and State agency staff for monitoring, evaluation and enforcement The team learned that there is a lack of funds for monitoring and evaluating any log salvaging activities. It will be difficult to evaluate the effectiveness of the BMPs and determine if operational conditions are followed if projects are not monitored. Additional staffing would be required to properly monitor log salvaging and to enforce conditions that are placed on the permittee. Additional staff would also be needed to perform research and collect data to determine environmental effects of log salvaging.

RECOMMENDATIONS

The team recommends both interim actions and long-term approaches as follows:

1) The team determined that preparation of a programmatic EIS was the optimum approach for evaluating the impacts of salvaging submerged logs on aquatic habitats. A thorough evaluation of log salvaging was considered beyond the means of most applicants and, as a secondary benefit of a State-prepared programmatic EIS, log salvage applicants would not be automatically required to prepare full EAs for each project, particularly if they agreed to adhere to specific BMPs. A programmatic EIS should provide information for sound decision-making by the permit officers and the review agencies, and identify important research needs. The team should meet during the scoping phase to recommend research and other needs and concerns to be addressed in the EIS.

The team determined that at the time of the completion of the EIS, a team should be reconvened to review the findings and determine future actions. Regulations can then be developed to address the impacts, if any, that log salvaging may have on the environment.

The programmatic EIS will be an expensive endeavor, and it would require a considerable amount of time to complete. The Wildlife Resources Commission has agreed to be the contact agency for administering the study, and the team requests DENR fund the study. If DENR cannot provide funding, the various review agencies/divisions will have to seek other resources.

2) The interim approach includes a list of BMPs that log salvagers can follow in lieu of completing an EA for every proposed site on the application and to make up for the lack of available research on appropriate mitigation. The team discussed giving the permit applicant the option of following the BMP list or completing an EA. The BMP list shown in Table 2 is based on team consensus and literature review. Whether a log salvaging permit applicant completes an EA or follows the BMPs, the team believes impacts to the aquatic environment will be minimized while the programmatic EIS is in preparation.

The recommended BMPs should apply to future log salvage operations east of the fall line. Current log salvage permit holders should be allowed to seek modifications to their permits on a case-by-case basis to conform to these recommended BMPs.

The salvaging applicant should be apprised that DENR might require an EA in spite of the applicant's intent to follow the recommended BMPs. Also, additional operational restrictions may be applied as permit conditions to address specific concerns over the magnitude or duration of the operation, or the peculiar sensitivity of the area, among others.

TABLE 2. RECOMMENDED BEST MANGEMENT PRACTICES

<i>Ecological or physical characteristics</i>	<i>Recommended BMPs for the particular situation, otherwise NCEPA review is required</i>
Toxic materials identified in sediment within project area associated with former/current wastewater treatment plant (WWTP) out falls or boat facilities	If submerged log salvage is proposed within 300 ft. from a former/current boat repair facility and/or within 500 ft. from a former/current WWTP out fall, applicant must attach a sediment analysis (toxicity and heavy metals) to the permit application
Project area is a designated coastal or inland primary nursery areas (PNA) or a documented anadromous fish spawning/nursery area	No work is allowed within PNAs and/or documented anadromous fish spawning/nursery areas except for windows identified by resource agencies
Project area is in Outstanding Resource Waters	No work is allowed until NCEPA review is completed
Project site is in Nutrient Sensitive Waters (NSW)	Applicant must demonstrate that proposed work will comply with applicable NSW management plans
Project area contains submerged aquatic vegetation (SAV) or known SAV habitat	No permit available within 300 ft. of an area containing existing or known (by expert opinion) SAV habitat
Project area adjacent to riparian shoreline	A buffer equal to 25% of the width of the water body or a distance of 100 ft. from shore whichever is less must be maintained from riparian shorelines
Project area adjacent to piers/docks	A 100 ft. buffer must be maintained between log removal and active docks and piers unless property owner gives permittee written permission
Project area near water intake(s)	A 500 ft. buffer from a municipal intake and a 300 ft. buffer from an industrial intake must be maintained
Project area near public boat ramps	A 900 ft. buffer must be maintained from all public boat ramps
Project area has pound nets	A 600 ft. buffer must be maintained from any permitted pound net set
Project area has shellfish leases or franchises	A 600 ft. buffer must be maintained from any documented and marked lease or franchise
Logs are exposed above the stream bed more than 12 inches	Will require NCEPA review to determine if eligible to be removed
Project area within municipal boundaries	Salvager must give written notice to local government and attach evidence of such notice to permit application
Log recovery method involves excavation of bottom material	Dredge and Fill Law applies; no work is allowed until NCEPA review is completed

3) The team recommends that the DENR Secretary contact the COE, Wilmington District, to request that the COE District assume statewide jurisdiction over submerged log salvaging so that environmental review can be performed on proposed projects in non-CAMA counties. If the COE assumes statewide jurisdiction over this activity, the permit applications for log salvage operations in inland waters will become subject to reviews under the COE’s Section 404 and DWQ’s Section 401 processes.

Prior to completion of its work, the team wrote to DENR Secretary Bill Holman requesting that he contact the COE about the COE assuming statewide jurisdiction (Appendix N). Secretary Holman decided to wait until the team’s final recommendations were submitted to determine if the request would be made to the COE to assume jurisdiction or if there is another alternative.

4) The team recommends that the operational conditions shown below in Table 3 be applied to all future log salvage permits issued by DCM and DCR. Current log salvage permit holders may seek modifications to their permits on a case-by-case basis to conform to these recommended operational conditions. DENR should prepare a guidance document for applicants to inform them of the various requirements that must be fulfilled before receiving a permit. The guidance document will include the operational conditions, information about the location of primary nursery areas, and information concerning spawning seasons for anadromous and resident fishes. The applications will be reviewed by all relevant agencies, but these conditions will be understood to be followed by the log salvager and will be part of the permit conditions. Failure to adhere to these conditions would be grounds for revocation of the permit before the expiration date or grounds for denial of a renewal request.

TABLE 3. RECOMMENDED OPERATIONAL CONDITIONS

1.	Use of public boat ramps to remove logs from water is prohibited.
2.	The use of stream bank to drag logs from the water is prohibited.
3.	If State water quality standards are violated all work must cease.
4.	Only logs greater than 8 inches diameter at the small end may be recovered.
5.	No logs may be recovered from water depths less than 7 feet NWL.

6.	In no case will the operation have an adverse effect on public use or navigation of the water body.
7.	Record of activities required: Permittee must provide records of location and number of logs salvaged to DCR and DCM on a monthly basis. Failure to report may result in permit revocation.
8.	Before a project begins at each approved site, the applicant must provide one sample of turbidity and dissolved oxygen values, and at other times as requested by a State compliance official if water quality standards appear to be exceeded. Applicant is encouraged to provide turbidity and dissolved oxygen values throughout the operation at each site. If activity exceeds State water quality standards, operation must be suspended unless ambient values, as determined by samples at start of operation, are already exceeded. In that case, the activity may not exceed the ambient values.
9.	All vessels and equipment must be marked and lit according to U.S. Coast Guard guidelines. All logs that are salvaged must be secured or totally removed from the water so as not to interfere with navigation.
10.	If multiple salvagers request authorization in the same permit area, DCR permit policies will apply; <i>i.e.</i> , limited to one boat with attending vessels and crew based on first come, first served basis.
11.	Project area has known or suspected cultural resources: DCR requires 200 ft. buffers for known sites and may require cultural resource surveys for suspected sites.
12.	Operation must be in compliance with specific BMPs listed in the permit.

CONCLUSION

Few studies are currently available that thoroughly evaluate the effects of log salvaging on aquatic environments in the southeastern U.S. The programmatic EIS will be used to develop this much-needed information so that decision-making can be based on factual information. Use of the BMP list/EA requirement, operational conditions, and the guidance document that will be provided for log salvaging permit applicants should be the State's course of action in the interim while the EIS is being completed. The BMP list gives the log salvager some flexibility while minimizing negative environmental effects.

The team recommends these actions be taken in order to maintain a high level of protection for natural resources and to ensure a healthy environment for generations to come.

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APPENDICES

Appendix A	Submerged Log Salvage Policy Development Team Members
Appendix B	Non-team Participants
Appendix C	Team Meeting Minutes
Appendix D	Invitation to Interested Parties to Attend Team Meetings and List of Recipients
Appendix E	Sample Representations of Submerged Logs: Drawings from Side-scan Sonar and from Diver Observations
Appendix F	Current Cape Fear Riverwood Corp. DCR and CAMA Permits
Appendix G	Current Lost and Found Lumber Company DCR and CAMA Permits
Appendix H	Current Al Purdy DCR Permit
Appendix I	Historical McEntire DCR Permit
Appendix J	Memo Prepared by David Heeter Regarding Potential Legal Issues
Appendix K	DCM Permit Regime
Appendix L	DCR Permit Regime
Appendix M	Brief Description of NCEPA Applicability
Appendix N	Memo to Secretary Bill Holman

APPENDIX A: Submerged Log Salvage Policy Development Team Members

Donna Moffitt, Division of Coastal Management, Team Leader

Doug Huggett, Division of Coastal Management

Bob Stroud, Division of Coastal Management

Mike Street, Division of Marine Fisheries

Sara E. Winslow, Division of Marine Fisheries

Kent Nelson, Wildlife Resources Commission

David Heeter, Attorney General's Office

Bill Pickens, Division of Forest Resources

Richard Lawrence, Department of Cultural Resources, Underwater Archaeology
Unit

Steve Claggett, Department of Cultural Resources, Office of State Archaeology

Cyndi Bell, Division of Water Quality

Wanda King, State Property Office

Bennett Wynne, Wildlife Resources Commission

Renee Gledhill-Earley, Department of Cultural Resources, State Historic
Preservation Office

David Rabon, United States Fish and Wildlife Service

Jim Stephenson, North Carolina Coastal Federation

Kelly Rudd, Office of Juvenile Justice (formerly with Division of Coastal
Management)

APPENDIX B: Non-team Participants

Vance Chamberlin
Frank Taylor
Robert and Jonathan White
Al and Greg Purdy
Sandy Mort
W.D. Pruden
Steve Valentine
Kenneth Crow

Cape Fear Riverwood Corp.
Cape Fear Riverwood Corp.
Lost and Found Lumber Co.
Log Salvagers
Division of Water Quality

APPENDIX C: Team Meeting Minutes

November 2, 1999

Submerged Log Salvage Policy Development Meeting Tuesday, November 2, 1999

Attendees:

Donna D. Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Bennett Wynne, Wildlife Resources-Kinston
Sara E. Winslow, Marine Fisheries
P.A. ASki≡ Wojciechowski, Marine Fisheries
Steve Claggett, State Archaeologist, Historic Preservation Office
David M. Gourley, State Property Office
Renee Gledhill-Earley, State Historic Property Office
Cyndi Bell, Division of Water Quality
Jim Stephenson, NC Coastal Federation
Richard Lawrence, Underwater Archaeology
Bob Stroud, Division of Coastal Management, WIRO
Dave Heeter, NC Department of Justice
Kent Nelson, NCWRC, Inland Fish, Greenville
Jessica Gill, Division of Coastal Management
Kelly Rudd, Division of Coastal Management

The meeting began with a brief overview of the goals and issues by DONNA MOFFITT who was asked by senior management in the department to pull together a team to look at the issue of salvaging antique logs from river bottoms and sounds in North Carolina. The meeting began with each person in the group introducing themselves and giving a brief description of their area of expertise. The purpose of inviting this particular group is to come up with policy recommendations that will be in the best interest of the environment, historical preservation, salvagers, the state, etc.

The participants were asked to establish ground rules for future meetings and the desired outcome of the policy development team. KELLY RUDD is serving as the facilitator for the policy development meetings and will be the lead staff person on this project led the discussion. The group stated that they would like the following goals to be priorities for future meetings:

1. Informal approach
2. Few rules, focus on issues
3. Reach a consensus on issues
4. Open-minded discussions with respect for the ideas of others
5. Start meetings on time and end on time with a specific agenda
6. Accomplish tasks in a timely manner
7. Be mindful of the interests of log salvagers as there are none on the committee
8. Focus on factual information (as opposed to speculation and conjecture)
9. Tackle controversial issues despite difficulties
10. Determine if substitute attendees are needed and what role they should play
11. Consider precedents set by other states
12. Should one salvager be invited or all salvagers currently working in North Carolina
13. If interested parties are invited should they be observers or participants
14. Should we invite other agencies to participate (i.e. Dept. of Commerce, affected municipality representatives)

The next issue discussed was whether or not to allow substitute attendees to the meetings and the role that substitute attendees should play. Specifically, should that person step into the appointed team member's shoes and speak on their behalf or, should the substitute simply take notes and report back to the regular team member. The feeling was that the substitute should be briefed on the issues addressed heretofore and would be up to speed when they attend and should be able to participate. Essentially, they would be in a position to replace the regular team member completely.

Additional participants who should be included in the policy development team was the next item addressed. The team felt that the log salvager's interests should be one primary concern and they should be involved in policy development in some fashion. The feeling was that it's not necessary to invite a salvager to be a member of the policy development team but they should be invited to the meetings as observers and kept abreast of the team's findings and recommendations.

A point made in the interest of the salvagers was to invite someone from the Department of Commerce (DOC) to represent the commerce side of salvaging and in effect, act as an advocate for the salvagers. The issue may be under the radar for DOC but if this particular policy development effort is time limited someone may be able to participate. Another group that will need to be mindful of are some of the Municipalities as they have a measure of control over the waterfront areas in their counties. It is fair to say that in particular areas, the local municipality will probably not want salvaging to take place for specific reasons such as adverse environmental impact or for damage to historical artifacts. It was suggested that local government might need to participate in the policy development process. At the very least, local government should be invited to the meetings as observers (especially if a salvage operation is proposed in their area). Specific areas that were suggested for participation are Edenton and Wrightsville Beach with additional areas added as the impact to their area becomes known.

The known log salvaging companies currently working in North Carolina are Chamberlain-Taylor Riverwood Company, The White Brothers (Lost & Found Lumber), Rick Burton and Al & Greg Purdy. There are also two or three other people who have contacted Cultural Resources over the years and were issued permits some years ago for private individuals to log recovery on their own property.

Should these policies cut off at the Coastal Area Management Act's (CAMA) jurisdiction line or do we go further up stream? The group feels that the policy should extend upstream. This issue was also addressed several years ago by a group including Dave Heeter. At that time it was concluded that in CAMA counties, people would have to apply for CAMA permits as well as a permit from Division of Cultural Resources (DCR) with Division of Coastal Management (DCM) taking the lead. Upstream from CAMA jurisdiction, a permit from DCR is required and that agency will take the lead. It was decided that the U.S. Army Corps of Engineers (COE) should be kept abreast of the group's findings and should be allowed input.

A copy of a memo from the 1997 meetings that Dave Heeter drafted on log salvaging was copied and passed out.

DOUG HUGGETT

A visual presentation by Doug Huggett outlined the history of the CAMA permitting process. When a Major permit application is received, the Division of Coastal Management (DCM) is part of a joint review effort where the application package is submitted to 14 separate State and Federal review agencies. Most of the people in this log salvage policy development team represent part of that review list with the exception of Forestry. All of the comments that any agency may have gets sent back to DCM who then compiles and considers the comments prior to making a final permit decision on any permit, we will consider those comments. The CAMA application also serves as the application for a Water Quality Certification from Division of Water Quality (DWQ) and a federal permit from COE. In addition to the agency notification, there is also a public notice requirement built into CAMA, which basically means DCM puts a notice in the newspaper closest to the project location. The public is given a minimum of 21 days to make comment to the Division and their comments are considered before the final permit decision is made.

Occasionally, the State Environmental Policy Act (SEPA) will have to be factored into the DCM permit review process. A log salvage project is not one that would normally fall under DCM's minimum criteria to require a SEPA document but there's always authority on a case-by-case basis to elevate projects into SEPA based on the potential impacts and the unknown variables of a project. The River Wood project was required to meet SEPA standards and the policy right now is that any application that comes in for a log salvage permit is going to have to go through the SEPA process. It's important to note exactly what the SEPA process is supposed to be. Everyone involved in the permit decision-making process has the ability to make use of the SEPA document as a decision making tool. It's not intended to be a regulatory procedure itself, it's supposed to help in making a final decision. Once DCM has received all of the public comments and all of the agency comments, DCM is ready to make a final decision. CAMA states that a permit may be denied based on failure to comply with any one of ten issues or criteria. The permit must be issued if one of these ten findings is not made. The majority of the time, a permit is denied due to failure to comply with the portion of CAMA that states in any case where the development is inconsistent with state guidelines or the local Land Use Plan (LUP).

The first of two log salvaging permit applications that have been submitted to date was for the Riverwood project on the Northeast Cape Fear River near the 117 Bridge. This permit application was made in 1997. These sites are within a half-mile radius from the center point and the permit is to take logs out of that area. This particular project successfully passed the SEPA review and made it to the permit application phase. The applicants stated that the removal process would not include logs that were buried. The proposed removal was only for logs on the bottom of the river and that no sediment would be removed. There were no agency objections to issuance of the permit. Division of Marine Fisheries (DMF) recommended approval as long as the project did not go outside of the proposed area and that if it did, a new permit review should be required. Wildlife Resources Commission (WRC) expressed concern for the habitat value of the woody debris that was being removed. Specifically, WRC wanted to be sure that material which was not going to be used as log salvage material would be replaced as close as possible to its existing location to replace the habitat value. WRC also expressed concern for issues relative to sedimentation and the seasonal removal as it related to habitat population. One objection was made by an individual but the objection was not based on anything other than opposition to the activity itself. The State Property Office did not have any comment or objection on this project but they did want to consider requiring an easement on the next project. The issue was discussed and concluded that no easement was required. In other approval or permits that were needed, the River Wood Salvage company did apply for and receive a permit from Division of Cultural Resources (DCR) prior to applying for a permit from DCM as well as the state clearinghouse review for the SEPA document.

One of the bigger issues to be considered here is the private use of state resources. The potential exists for a private individual to receive a financial windfall from taking state resources. When all of the comments were considered, there was nothing that elevated itself to the point of denying the permit. There were not a lot of restrictions placed on the permit, basically just that there should be no removal or excavation of bottom sediments and that the applicant would give our staff a two week notice prior to starting up any work so that DCM could monitor the initial startup and make sure everything is being done properly.

Lost & Found Lumber company (also known as the White Brothers Project) applied for a permit in early 1998 to set up four removal sites on the Perquimans River near Hertford. Three of the sites were above Hertford and the fourth down closer to the mouth of the Perquimans River. The radius of the excavation activity was also approximately half a mile. One significant difference between this proposed project and the Riverwood project was how they were going to do the work. Originally, the applicants were going to take anything they could find but they ultimately backed off from that and were only going to excavate submerged logs. Lost and Found proposed sending a diver down to look for submerged logs and an eye bolt in the logs and wench them out through a catamaran and take them to a high ground processing area. DENR again required a SEPA review on this project and the review was satisfactorily completed. There were some mitigative measures in the departmental review of the SEPA document that allowed the SEPA process to move forward and some of those will be reflected in the permit conditions that DCM ultimately put on log salvaging. There were several recommendations for denial of the permit. These recommendations came from the WRC, the NC Coastal Federation (NCCF), US Fish and Wildlife Service

(USFWS). There were also letters of support for the project from the Albemarle Commission and several private citizens who were writing in on behalf of the applicants.

Perhaps the reason the group here attempting to develop policy recommendations is because there were requests from the Marine Fisheries Commission (MFC) and the WRC that were different from staff comments. Both commissions requested that a moratorium on the entire issue be enacted and that no further permits be issued until a team could be put together to develop some policies to try and figure out where this industry is going in the state of North Carolina. Requests were made to both the Secretary and the Governor neither of whom chose to move forward with the moratorium on the log salvage issue. Without the Governor or the Secretary enacting such a moratorium, DCM was forced through CAMA rules and regulations to move forward with a permit review on the project. Donna Moffitt stated that DENR received advice from the General Counsel office stating that the Department does not have the authority to put a moratorium on issuance of a CAMA permit and that only the General Assembly can enact authority for a moratorium on issuance of a CAMA permit. That is one reason why the Department declined to tell DCM that they could not issue a permit and that there was a moratorium on the process.

The concerns of the review agencies and the public cannot all be addressed here, but every effort has been made to hit the main points. To recap, several individuals and groups brought up studies that were done by Dr. Courtney Hackney at UNC-Wilmington on contaminated sediments in the area as well as a portion of the APES study that addressed that issue. DCM recognizes that both studies were finding contaminated sediments in the area and the APES study specifically shows contaminated sediment where some of those logs are going to be removed. Associated with the contaminated sediment study is the increased turbidity caused by this kind of activity causes because the applicants were going to be removing (basically) fully buried logs. There were also issues relating to habitat value in the logs or the woody debris and how their removal might degrade the fisheries habitat in the area. Also, the private use of state resources for financial gain underlies this whole issue.

Lost & Found Lumber's excavation sites one, two and three, which are above Hertford, in a much narrower part of the Perquimans River, was put under an in-water work moratorium which stated that they could not work in those sites during the moratorium unless they could prove to the various permitting agencies that the work could be done without causing a turbidity problem and a sediment problem in the area for the fisheries resources. To try and deal with the issue of the habitat value of the logs that are protruding above the surface, and to meet part one of a two step process of the SEPA review, the applicants are required to remove logs that are totally buried. In addition, it was required that all work in the SAV habitat be done in greater of seven feet of water, more than 100 feet away from shore and outside of any SAV habitat. These conditions appear to adequately address any SAV habitat concerns.

After the toxic sediment issue became a bigger issue and DCM investigated, DCM sent a request to DWQ, who had claimed that they had no jurisdiction under section 401 of the Clean Water Act. They were asked to review it for pure compliance with state water quality standards and the response from DWQ was that if the project were done as proposed, state water quality standards would not be violated. DWQ did, however, request that a sediment boom be put around the sites and that was included as a permit condition. There was no need for a moratorium on the fourth site.

It should be noted that the CAMA permits do not give the permit applicants exclusive rights to the areas that they are excavating in. However, DCR issues a permit for exclusive rights. Other companies and individuals have the right to apply for and receive permits for the same areas.

Bob Stroud mentioned, in fairness to Riverwood, that according to the permit application was trying to depict that they were not going to be removing the logs by digging but by bolt and grapple which would bring the log straight up and the thick sediment would fall right back into place.

DAVE HEETER

The main legal focus of the Attorney Generals (AG) office is the various permits, permissions and so forth that may be required and also some of the key issues raised under those laws. From the discussion so far, and the review of the last two permit applications there seems to be an agreement on which agency

should take the lead in circulating the application review in the case where there is a CAMA permit involved. As many are probably aware, DCM already has a multi-agency review process in place under CAMA and it makes sense for it to be the lead agency in the twenty coastal counties.

There are some other instances where DCM should also be the lead agency. The Dredge and Fill (D&F) law applies to five counties outside of the twenty coastal counties. There is certainly a possibility that these projects may require a D&F permit and if they are in those counties, DCM should be the lead agency. Also, the D&F law applies to state owned lakes and DCM should presumably take the lead there. Once outside of the counties covered by CAMA or the D&F law, Cultural Resources should probably act as the lead agency because of the need for a permit to explore, recover or salvage underwater artifacts when trying to bring up submerged logs.

A permit was circulated by DCR earlier in the year for a non CAMA/D&F project, but DCR is not set up to handle that kind of review. A few comments were received in the permit review process and the applicants were told that they had to prepare an Environmental Assessment (EA) and they have not yet contacted DCR with that information.

The lead review agency, at least in terms of CAMA, seems to be DCM. In terms of permits that are required under CAMA for development in any area of environmental concern, according to an opinion written by Dave Heeter for coastal management by the AG's office a few years ago, submerged logging usually involves excavation which is a development activity subject to CAMA. Also, the argument that can be made that removing these logs alters the bottom of the river or the creek or wherever they are located and again, that is an activity that is subject to CAMA regulation.

Some of these projects may also involve dredging and that will depend on the type of equipment that the applicant is proposing to use and how they are going to use that equipment. Also, there is little question that these activities are taking place within estuarine and public trust waters, which DCM does have jurisdiction over under CAMA. Because other permits or authorizations may be required from other state agencies, this kind of development will be considered major development under CAMA and would be subject to the full review process by the fourteen agencies that Doug Huggett mentioned earlier.

Reasonable conditions by these agencies can be attached under CAMA and Doug has identified a number of these conditions that have been attached to the two permits that have been issued. The state D&F presents more difficult questions with regard to whether or not the state has jurisdiction. The law is peculiar in that it talks about requiring a permit for any excavation or filling project but then when you read the title and read other parts of the law it talks about dredging. The question is are we talking about excavation alone or are we talking about dredging which is sometimes a different activity. The answer in the long run is unclear. If someone proposed dredging the bottom- to clearly dredge it out to find logs-then the answer would be yes, it clearly falls under the D&F law. The activities that have been proposed so far are certainly more marginal in terms of the D&F law and there was no D&F permit required for either one.

The other permit that is important is the permit required by DCR to explore, recover or salvage underwater artifacts. We've already mentioned the fact that conditions may be attached to those permits if DCR deems them to be in the best interest of the state, --that is a pretty broad standard. Potentially, they can and have attached some conditions to the permits they've issued so far. Also, a big difference between their permits and CAMA permits is that Cultural Resources normally awards exclusive recovery rights in an area whereas under CAMA, at least under the existing legislation, a permit can be granted to anyone who wants to salvage logs within a given area of the river if they meet all of the permitting standards.

Another controversial issue, particularly with the River Wood project was, whether or not an EA was required. Under SEPA every state agency must include an EA in every recommendation or report involving the use of public lands for projects that may significantly affect the environment of the state. That project's review was under way and they had their DCR permit and then DCM found out about the need for an EA. There was some delay while the determination was made that an EA would be involved. It was the right determination as the state certainly owns the lands and any land under navigable waters or

even any potentially navigable waters in the state, are public lands and there may be certain instances where a claim of private ownership can be raised but the norm is certainly public ownership of the bottom of state waters. The state seems to have made the correct determination on that issue, despite any difficulties the first time it came up.

Another important question that really hasn't been resolved completely is the state ownership of logs, meaning that it hasn't been tested in court yet. The opinion of the AG's office is certainly clear. They feel that the logs became personal property when they were severed from the realty, from the underlying land, and floated down stream. They then sank and lay on the bottom of the state's waters for more than ten years, and under state statutes. After they lay there for more than ten years then became state property.

Someone could possibly raise a claim of state ownership at some point; there are certainly some old statutes dealing with brands and trademarks on timber, theft of marked timber and things of that nature. That indicates that they were considered private property at some point in time. But, the AG's office still feels that once they were on the bottom of the state's waters for more than ten years they became state property

The issue of compensation to the state has also been raised here. Theoretically, compensation is due the state if the logs are indeed state property. The log salvagers are going out and salvaging something that belongs to the people of the state of North Carolina and making a profit out of it. If they do make a profit, it's certainly fair that the state receives some compensation for that loss. The CAMA and D&F law clearly do not allow DCM to require compensation, and there is no authority to attach such a requirement. The salvage permit that DCR issues does seem to have the ability to attach conditions of that sort and everyone is waiting to see how these projects work out before even raising the issue.

The other issue that has been mentioned here is the possibility of a state easement. The Department of Administration (DOA) may grant easements in lands covered by navigable waters for such purposes and on such conditions as deemed appropriate. Again, this is a very broad standard. Those easements have to be approved by the Governor and the Council of State. A couple of scenarios, according to the statute, address an easement to the riparian property owner, also perhaps for permanent structures in state waters as opposed to this kind of temporary activity.

Other possible permits would include a state water quality certification. The understanding is that DWQ has not required one thus far. There are also some possible issues with regard to violations of state laws prohibiting obstructions to navigable waters. Theoretically, the salvagers could create obstructions in some way and become subject to those laws. The issues just addressed seem to be the major ones that need to be given consideration in policy development.

At the request of DONNA MOFFITT, RICHARD LAWRENCE gave an overview of Cultural Resources permitting process.

Obviously, this is a little different than most of the permits that are considered by DCR, which usually issues permits for, shipwreck sites, and the like. Generally, DCR issues permits for projects that are being done for their historical or archaeological value. But, because no one else really had a claim to these logs and it was determined that they are artifacts, people have been applying for DCR permits for the last ten-fifteen years. There have been some previous permits issued but those individuals never actively pursued the permits. The Riverwood group is the first one to act on the permits. They were issued a permit to salvage on the northeast Cape Fear River and the original permit was pretty lenient in that they could explore the northeast Cape Fear River, look for logs and recover logs.

At some point after that permit was issued, the project fell under CAMA jurisdiction and there were objections to the scope of the project and they were told to stop until the project went under the CAMA review process. Riverwood prepared the EA and ultimately a CAMA permit was issued. DCR then

issued a renewal permit with a new set of conditions. The renewal permit limited them to four specific areas instead of giving them general recovery rights up and down the Northeast Cape Fear River.

The permits that are issued by DCR are renewable annually. At this time, DCR does not charge a permit fee but, there are only a total of five or six permits issued a year. Again, these permits can allow for a division of recovered materials. Traditionally, the split has been 75% for the salvagers and 25% for the state. There is no reason this same type of division could not apply to log salvaging as well. Value of the logs has not yet been determined but it could be. Also, some states are using what is called a AWet Weight tax to determine the monies that the state will receive. The biggest concern that DCR has regarding the log salvaging operations is not the issue of the logs as artifacts but what impact the projects may have on what would be considered more significant cultural resources. If individuals are recovering logs at an historic landing for example, there may have been a mill there at one time and it may also turn out to be the location of a shipwreck as well and DCR doesn't want logs drug through a shipwreck site.

Several years ago on the Roanoke River, at a site that was a Confederate fortification called Fort Branch, the COE was removing a number of logs that had accumulated there. These were natural trees that had accumulated on the bottom. The purpose of moving the logs was to get to the cannons that had been thrown into the river. The first log they brought up that was full of branches and roots had a carriage wheel from a Confederate gun carriage hanging from one of the roots, so they stopped the removal immediately. The point is that there is the potential in these recovery projects to disturb significant artifacts. There are a lot of activities such as the COE snag boat, which is out on a daily basis removing woody debris and removing snags from the waters of the state as well as the issue of removing pilings and other debris. DCR wants to make sure that the salvagers are treated fairly and are not held to different standards.

The permits issued by DCR generally require a monthly report of the number of logs being recovered and the variety of logs being recovered. However, the salvage companies may not be active every month so no report would be required in that case. A lack of activity negates the need to report. The permits do not have to be exclusive but in the case where a salvage company is working in an area, it makes sense to have it exclusive so that the problem of one company having gone through the effort of finding the logs, buying the equipment, launching the expedition, etc., only to have another company come in and grab up the found logs right beside their site. Rival single site expeditions are not excluded under the DCR permit but it is discouraged.

Extracting these logs needs to be done with caution because an industrial area would have a unique variety of hazardous material to be dealt with and the salvagers may not be aware of it's existence until the project is under way.

CYNDI BELL

It is not really a matter of the DWQ electing to issue 401 certification for a project; rather it is determined by jurisdiction. Outside the jurisdiction of the CAMA counties, the COE would make that determination. If it is in the CAMA counties and it's a D&F activity, a 401 certification would usually be necessary. DWQ can comment on whether or not a SEPA document is required and also provide an opinion to DCM on a CAMA permit and recommend conditions. If the proposed work was to affect water quality standards or remove the existing use of a stream, then DWQ could potentially prosecute but could not stop work. Basically, there are no preemptive measures that DWQ could take; the water quality impact could not be determined until the work was under way.

BOB STROUD

Prefaces comments by stating that he isn't totally against the log salvaging operations. This is based on having been professionally trained as a Fisheries Biologist, having worked more than four years with what is now DWQ, spending innumerable hours in many river basins in the state of North Carolina and a lot of life experience studies and observations on fisheries habitat and resources.

(Handed out result of last conversation with River Wood Salvaging and their consultants).
Because of the lack of any way to photograph or otherwise record what the bottom conditions may be like,

DCM suggested that they obtain divers and try to remember what was found on the bottom and depict that graphically to submit to DCM so that there would be some idea of what the configuration of that particular area of the river looks like. According to the graphic submission, there does not appear to be any logs protruding above the surface.

The problems that have been mentioned so far indicate that the logging is not excavation but extraction, which is virtually the same as pulling a piling out except that the pilings are usually vertical and the logs are primarily horizontal. They are not actually removing any appreciable amount of bottom and the logs that have come up so far have been very slick so no mud adheres to them during removal and the bottom pretty much settles back in immediately. Also, the logs didn't have much bark, oxidation or decay and there has been no indication of insects at work. The logs are being removed from an anaerobic environment that very few species would be able to survive for any period of time in the depths of the northeast Cape Fear River where they were being extracted. Also, we do need to know what heavy metals are in the bottom sediments and the regional differences of those metals. The Riverwood Company has offered the state a royalty or some other money and has been turned down, but they are certainly willing to pay the state some measure of compensation. The appropriate agency to collect royalties needs to be determined.

There seems to be a bit of a bias against the fact that these companies seem to be taking state owned logs off of the bottom of the river without compensating the state. The logs can be equated to a certain extent with clams and oysters which are also state resources, which are harvested in some cases in an exclusively franchised area and there doesn't seem to be any major compensation to the state for those resources.

Another consideration should be whether we can replace habitat from the log removal with approved fish collecting or attracting devices that have been used in other areas and are commonly used in lakes for certain species of fish.

Areas of concern that need to be addressed by this team and the agencies they represent:

1. Monitoring permit conditions
2. When to add projects to list of primary processors
3. Potential fisheries habitat loss
4. How to quantify the number of logs providing habitats
5. If fisheries are impacted, can the impact be mitigated
6. Turbidity
7. Metals contamination
8. SAV habitat impacts
9. Salvaging from smaller creeks that might be providing spawning and nursery resources (Anadromous Species)
10. Log salvaging increasing navigable hazards
11. Impacts on public trust and conflicts
12. State ownership of logs issues
13. Disposition of personal property
14. Public compensation
15. Inconsistencies of permits
16. Treating State and Federal projects differently from private projects
17. Not allowing the violation of water quality standards
18. Sediment contamination
19. Protection of existing uses, i.e. fisheries habitat and water supplies
20. Appropriate amount of research to support decisions
21. Impact of salvage on other cultural resources
22. Decide who coordinates review in other CAMA counties
23. Extraction-vs-excavation
24. Discern whether logs are in an anaerobic setting
25. Decide whether log salvagers should receive exclusive salvage rights

26. Is the disturbed/displaced habitat replaceable
27. Should royalties be collected and who should collect them
28. Prohibit recovery in SAV areas
29. Seasonal salvaging limitations
30. Determine the value of logs
31. Limit salvaging in industrial areas to prevent toxic hazards
32. Monitor extractions
33. EA=s be required
34. Site specific with addendums
35. Riparian property owner rights considered
36. Standardized conditions on permits, i.e. water depth, shoreline distance
37. SEPA process ought not be used as a punitive measure against applicant but as a decision making tool
38. Retrieving logs from river via public boat ramps, pulling up banks, etc.
39. Various impacts of operations based on size
40. More specific scope of work area
41. Potential positive economic impacts to local community

DONNA MOFFITT:

The last part of the agenda is to talk about the frequency of these meetings, where they should be, how long should the whole process take and the need for facilitation. There was some difficulty getting this meeting together because everyone has a very busy schedule and it took a lot of work to find an acceptable meeting date, time and location. We need to discern whether everyone has a standard day or time that works better for everyone. Early afternoon is best for the members who have to come up from the coast and it would also work out better for Raleigh staff traveling to the coast. The proposed meeting time is to start at 12:00 p.m. and everyone brings their lunch, definitely no meetings earlier than 10:00 a.m. The proposed time limit on the each meeting is three hours. The next meeting will be on Thursday, December 2nd, 1999 at the Wilmington regional offices and there will be a field trip to the Riverwood Salvage site beginning at 10:00 a.m. The dates for the following meetings are Thursday, December 16th, 1999 and Tuesday, January 11th, 2000. The time and locations will be determined at the December 2nd meeting. The agreed upon self imposed deadline for the whole policy development process is Wednesday, March 1st, 2000.

December 2, 1999

**Submerged Log Salvage Policy Development Meeting
Thursday, December 2, 1999**

Attendees:

Donna Moffitt, Division of Coastal Management
 Doug Huggett, Division of Coastal Management
 Kelly Rudd, Division of Coastal Management
 Bob Stroud, Division of Coastal Management
 Sara E. Winslow, Division of Marine Fisheries
 Bennett Wynne, Wildlife Resources-Kinston
 Cyndi Bell, Division of Water Quality
 Richard Lawrence, DCR-Underwater Archaeology
 Kent Nelson, NCWRC, Inland Fish, Greenville
 David Brown, Division of Forest Resources
 Wanda King, State Property Office

Mike Street, Division of Marine Fisheries

Frank Taylor, Riverwood Logging Co.

Vance Chamberlin, Riverwood

Robert and Jonathan White, Lost & Found Lumber Co.

Al & Greg Purdy

W.D. Pruden

The meeting began at Riverwood's log processing site in Leland, NC. The group met with Frank Taylor, Vance Chamberlin, Pete DeVita, and Nick Lincoln of Riverwood for a tour of their log processing facility and the equipment that is used in retrieving submerged logs. Mr. Taylor and Mr. Chamberlin explained the process that they go through to retrieve submerged logs and a question and answer session lasted throughout the morning tour.

The owners of Riverwood stated that they do historical research of where sawmills were located in the early 1800s. By doing this, it gives them an idea of where to look for heavy concentrations of submerged logs. They have discovered that every "mill pond" in the rivers across North Carolina have sunken old-growth logs in them. 18% of all logs that were harvested in the 1800s and before that were floated to the processing location sunk. Riverwood representatives stated that they were only interested in retrieving submerged logs that were in concentrated area and not those that are "here or there." Methods such as diving surveys, sonar graphs, side-scans, and substrate profiling are used to determine where the logs are located. The log concentrations appear as a mound on the bottom of the river. The diver(s) will then use an approximately foot long pipe to probe the mound to determine that in fact it is a mound of logs. The log stack is usually coated with approximately a foot of sediment described as a mayonnaise type substance. Once the concentration of logs is located and determined to be worth the effort to retrieve, the surrounding edges of the mound are flagged. The crew returns to the dock located at their processing area and the retrieving crew drives their boat and barge to the site to begin removal of the submerged logs. A large 30-ton crane is located on the large barge and a large grapple is used to retrieve the logs. The logs are placed on the barge, which will be driven back to their dock where the logs are unloaded and moved to the sawmill via forklift. The logs are kept wet until they are milled, otherwise deterioration occurs. After the logs are planked, they are set out to dry. The majority of the logs that have been retrieved are pine, ranging from loblolly to southern yellow, and cypress. To date, very few hardwoods have been retrieved.

The representatives of Riverwood report that they are careful in their log removal and sensitive to the environment that they are working in. Nick Lincoln, Riverwood's marine surveyor, reported that they follow the guidelines of the Smartwood Certification program, are able to recognize pollutants in areas from other industries or businesses and therefore can notify respective agencies, and that they produce GPS reports of the sites. When Riverwood does surveys they use a ground penetrating radar, which provides information such as water temperature, position of logs, water current, GPS location, and turbidity if measurable. Riverwood sends information to Richard Lawrence monthly that reports the findings of the month. More detailed information and findings are available upon request to interested state agencies. Frank Taylor discussed that they used best management practices (BMPs) when removing logs, and took it upon themselves not to harvest logs during certain spawning seasons.

The representatives from Riverwood stated that working with the DCR and Richard Lawrence had been a pleasure and that they were pleased that a team from various state agencies was developed to tackle the inconsistencies of the submerged log salvaging issue, but they had a few concerns: value of EAs, mobility between rivers (not river basins), and losing valuable logs to an increase of development in the Wilmington area (removal of pilings and cleaning debris from the bottom of the river in front of development sites often includes the old-growth sunken logs in the cleaning process). The men also stated that they had researched the short-nose Atlantic sturgeon habitat preferences and that they were not dealing in areas such as those. If they were to happen on an archaeological find they would most definitely not attempt log removal and that they would notify Richard Lawrence and the DCR. They also stated that the attempts that had been made to measure turbidity were not successful. It appeared that the amount of turbidity that occurred during their operations was no more than what would occur after a light rain and that the disturbance dissipated quickly.

Mr. Chamberlin and Mr. Taylor also stated that from their research of the early logging, stumpage fees may have been paid to the state when the logs were originally cut. They said that they do recognize the logs as state property, but to remember when considering state compensation that they are paying sales and income tax on the logs that they retrieve.

Mr. Taylor and Mr. Chamberlin stated the following: That the selling price of the logs usually was \$2.50 to \$3.00 per board foot. The price is a good price for lumber, but not wonderful considering that the type of wood that these logs are is not readily available. Riverwood's target price is 50% above logging prices and they start selling at \$2.75/bd. ft. Advertisement of lumber is done through the newspaper and word-of-mouth. They ship lumber across the US including California, Florida, Massachusetts, and New York. A viable concentration that they will consider retrieving can be anywhere from 60 logs and up. It takes approximately 70-80 logs to make 10,000 board feet and this can be done in approximately 1 and a half days. The water depths that they frequently work in are approximately 25-32 feet and less and that they are usually within 10-15 feet of the shoreline. They are not operating on a full-time basis as they would like to. They would need to produce 1 million board feet per year for the operations to be profitable.

Riverwood's proposed benefits of log removal:

- Clears debris from river to increase water flow (they noted that there is a tremendous amount of debris at the bottom of the rivers due to storm damage and falling trees)
- Can improve the economy of the local community as well as NC
- For every submerged log retrieved from the water, one tree on land does not have to be cut (helps take the pressure off of logging in old-growth forests)
- The submerged old-growth logs are part of NC heritage
- Removal of sunken logs potentially alleviates some of the toxins that enter the water (turpentine still exists within the logs)
- Removal of logs from the river bottoms does not displace wildlife as logging on land has the potential to do

Other potential or existing log salvagers that attended the tour were given the opportunity to discuss their existing or potential operation and comment on their concerns.

Al & Greg Purdy from Harker's Island attended the tour of the Riverwood operation. They have not begun log salvaging but stated that their operation would not be to the scale of that of Riverwood's. They have targeted Devil's Gut in Martin County for a potential salvaging operation.

Robert & Jonathan White, Lost & Found Lumber Company, have a permit to salvage logs in specified areas in the Perquimans River. They stated that they are practicing an environmental friendly methodology and that they are following the specified requirements as designated on the permit. As stated by the White's, before the CAMA permit was deemed necessary, the White's had retrieved 15 logs. Since the CAMA permit was granted they have only been able to retrieve 12 logs. Their concern was with the turbidity curtain stipulation that was placed on them, but not on Riverwood. According to the White's, considering the small size of their operation it has been very difficult to retrieve the one or two logs that can fit on their boat and include the large turbidity curtain that must make the return trip to the unloading point. Their request was for a modification of their permit so that log retrieval would be feasible for their size operation. They also stated that the moratorium that was stated on their permit, only allowing log retrieval during 3 months of the year due to fish spawning activities, has created a tremendous burden on their success at retrieving logs. They noted that the differences between the permit granted to Lost & Found and the conditions placed on Riverwood were not equitable.

12:00PM The meeting broke for lunch and reconvened at 1:30PM at the Wilmington Regional Office.

1:30PM Meeting was reconvened and minutes from the November 2nd meeting were approved. Donna Moffitt led the discussion of the field trip where it was noted that the field trip was a useful and helpful tool in completing the tasks at hand. Additional comments include:

- research was needed on turbidity and toxins
- the need to handle inconsistencies in permit conditions
- the feasibility of programmatic SEPA document to deal with common issues
- need to get copy of BMPs mentioned by Frank Taylor

The list of issues was then discussed. Donna Moffitt and Kelly Rudd had grouped the issues into categories to help get a better grasp on the issues. The team discussed the list making changes, additions, and deletions where needed (please see revised Issues List for changes). The team then prioritized the groups. Each member of the team was given 3 blue sticky dots to designate their top priorities and was given 3 red sticky dots to designate those grouped issues of less concern. All issues will be addressed if time permits, but considering the task and the short length of the process, it was decided that the team should tackle those issues of most importance to them first. The following list is the results of the prioritization process.

1. Impact on Habitat
2. Permitting
3. SEPA Review
3. Water Quality (tie)
4. Ownership/Compensation
5. Mitigation
6. Public Trust
7. Impacts on Property
8. Local Community Interests

(Please see Issue List for specific areas of concern under each issue group)

During the revision of the issues, additional issues were raised including that DCR isn't comfortable in handling environmental concerns when determining the issuance of a log salvage permit in non-CAMA counties. EAs are not a primary issue when DCR is determining the issuance of a log salvage permit. Having a programmatic EA was offered as a suggestion to improve the permitting process. SEPA documents may not be needed in non-CAMA counties.

A request for research was made for the following issues:

- water flow
- programmatic EA (SEPA document)

After the prioritization task was completed and agreed on by those present, the next meeting date, time and location was determined to be December 16, 1999, 10am, in Raleigh at the Archdale Building. Mike Street stated that the members from the Division of Marine Fisheries would not be able to attend due to divisional obligations.

The team agreed to delay the discussion of impacts on habitat until the January meeting so Marine Fisheries staff could participate.

Information that had been gathered discussing how some of the other states are handling this issue was handed out including an excerpt pertaining to the SmartWood Certification that occurs in Canada. Kelly Rudd will continue research of other states' actions and will give a full report at the December 16th meeting. If anyone has anything that would help in completing this task thoroughly, please notify Kelly Rudd. Donna Moffitt also requested that if any of the team members had a request for someone to speak to the group that would assist in the policy recommendation process to please let Kelly know. It was also requested that if members had articles, papers, or any other information that would benefit the group's task to please bring them to the next or future meetings or forward them to Kelly Rudd for inclusion in the information packets to be mailed or distributed at the meeting.

Public Comment:

Riverwood Representatives stated:

- Stumpage fees were paid to the state of North Carolina when the logs were originally cut.
- Requests that they continue to receive updates and information from the Submerged Log Salvage Committee Meetings.
- Would like to have input in the process.

W.D. Pruden stated:

- Question whether the CAMA regulations prohibit all projects in submerged aquatic vegetation (SAV) areas.
- Removing submerged logs made navigational improvements
- Sunken logs can "break-away" from the bottom of the river and crash into people's property (i.e., piers, docks, boats, etc.) during severe storms and hurricanes.
- Private property owners want logs removed from the bottom of the river because of the hazards that they create if left under water. (i.e., hazards to swimmers, boating, etc.)

Al Purdy stated:

-Retrieved logs compensate the state of NC through sales and income tax.

Lost & Found Lumber Company:

-Turbidity curtains were creating a hardship to themselves and to their operation

-Fish habitat will still exist at the bottom of the rivers considering the debris that will still be left in place.

The old-growth logs that they are trying to retrieve are not natural habitat because they were not naturally placed in the river--men cut the logs to sell and because of the logs sinking, the initial objective for cuffing the logs was not carried out.

3:30 PM The meeting was adjourned.

Submerged Log Salvage Policy Development Team

Issues to be addressed in the following order of importance:

Group A: IMPACTS ON HABITAT

1-Potential fisheries habitat loss

2-How to quantify the number of logs providing habitats

3-SAV habitat impacts

4-Protection of existing uses, i.e. fisheries habitat and water supplies

5-Discern whether logs are in an anaerobic setting

6-Salvaging from smaller creeks that might be providing spawning and nursery resources (anadromous & resident species)

7-Seasonal salvaging limitations

8-Cumulative affects

9-Possible hydrologic effects

Group B: PERMITTING

10-Monitoring permit conditions

11-Pile removal/snagging vs. log salvage

12-Should permits for log salvaging give an exclusive right? If so, how extensive?

13-Develop use standards and BMPs

14-Standardized conditions on permits, i.e. water depth, shoreline distance, etc.

15-Extraction vs. excavation

16-Site specific conditions per permit modification

Group C: SEPA REVIEW

17-Programmatic EA's be required

18-Appropriate amount of research to support decisions

19-Variou impacts of operations based on size

20-More specific scope of work area

21-Site specific conditions per EA addendums

22-Decide who coordinates review in non-CAMA counties

Group D: WATER QUALITY

23-Maintain water quality standards (metals, turbidity, dissolved oxygen, toxic hazards, etc.)

Group E: OWNERSHIP/COMPENSATION

24-Should royalties be collected, who should collect them, and how should the royalties be used?

25-Documenting extractions

26-Determine the value of logs

Group F: MITIGATION

27-If fisheries or habitat are impacted, can the impact be mitigated?

Group G: PUBLIC TRUST

28-Log salvaging increasing navigable hazards

29-Impacts on public trust and conflicts

30-Impact of salvage on other cultural resources

Group H: IMPACTS ON PROPERTY

31 -Riparian property owner rights considered

32-Retrieving logs from river via public boat ramps, pulling up banks, etc.

Group I: LOCAL COMMUNITY INTERESTS

33-Potential positive economic impacts to local community

December 16, 1999

**Submerged Log Salvage Policy Development Meeting
Thursday, December 16, 1999**

Attendees:

Donna Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Kelly Rudd, Division of Coastal Management
Bob Stroud, Division of Coastal Management
Bennett Wynne, Wildlife Resources Commission
Cyndi Bell, Division of Water Quality
Richard Lawrence, DCR-Underwater Archaeology
Steve Claggett, Division of Cultural Resources
Kent Nelson, Wildlife Resources Commission
Jim Stephenson, NC Coastal Federation

Vance Chamberlin, Riverwood Logging Co.
Al & Greg Purdy

10:00 Meeting was called to order and minutes were approved after two corrections made, those being the change of Craig Purdy to Greg Purdy and the change of Devil=s Cut to Devil=s Gut. Richard Lawrence brought a COE side-scan sonar map of the Cape Fear River near the Battleship as an example of what exists on the bottom of rivers. It was viewed by all attendees and was helpful in understanding what a side-scan sonar map is and the information that is provided.

Doug Huggett commented on the best management practices (BMPs) that Vance Chamberlin spoke of at the December 2nd meeting. Doug has received a copy of the section that was referenced and will review the document more in-depth and will discuss his findings in the future. A copy of the document entitled, *Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat* by Roger H. Smith at the Center for River Studies, Memphis State University (November 1992) may be available from the COE library.

10:15 State Report and Discussion

Kelly Rudd reviewed the information that was handed out at the December 2nd meeting and passed out additional information pertaining to submerged log salvage operations in other states. The states reviewed included Michigan, Minnesota, Florida, Georgia, and Wisconsin. Additional states that were requested to be researched include California, South Carolina, and additional information from states already mentioned as information arises. Kelly also stated that she is waiting to receive a report from Canada entitled, *Proceeding of the Workshop on Log Salvage from Aquatic Habitats* which discuss the possible environmental impacts that log salvaging may have.

Steve Claggett stated that he would speak to his contacts in several of the states mentioned and Richard Lawrence stated that he would speak with his contact in South Carolina about their methods of handling log salvage projects.

10:30 Group B: Permitting

The team discussed the various issues that fall under Permitting. Presently two CAMA permits have been issued and several were issued by the DCR prior to Coastal Management=s involvement. The permits that DCR granted have expired and no work was completed.

-Monitoring permit conditions: The group discussion was based around the lack of enforcement of permit conditions considering the low number of staff that is available to do investigations of the log salvage operations. It was stated that Riverwood=s permit contained mostly cultural requirements and very few coastal conditions. Lost & Found Logging Company=s permit has strict conditions placed on it through CAMA as well as the applicant volunteered to adhere to certain conditions. The resource agencies suggest conditions in the permit application review process and many times will not agree with permit issuance if they=re not included. This discussion brought forth the issue of volunteering to conditions vs. agency requests.

The CAMA permit is enforced through trusting that the permittee will follow the conditions, although, spot-checks are possible with any permit. CAMA permits expire after three years. DCR permits expire after one year. Cyndi Bell stated that DWQ practices self-reporting with the potential for spot checks. Citizen reporting is also a check that exists in the permitting process. So far, this system seems to have worked fairly well. Richard Lawrence and Steve Claggett stated that the DCR has shipwreck investigators and that monitoring requires a full time person.

Issues of concern that were raised during this discussion include the following:

- Who will do the monitoring?
- How will the monitoring be conducted?
- How frequently will monitoring be conducted?

- Will self-reporting be the encouraged method of monitoring?
- Permit conditions should be enforceable
- Is self-reporting the most feasible way of monitoring?
- It is difficult to see change/impacts in an underwater operation.

Some information is required to make educated decisions about monitoring. Areas of concern or stated opinions about this issue include:

- need data about how log salvaging impacts the environment
- if conditions cannot be monitored on a regular basis, the conditions need to be conservative
- when CAMA permit applications are submitted, action must be taken according to G.S. 113A-122(c).

Bob Stroud stated that the goal of DENR is to protect NC=s environmental resources and that log salvagers should be able to continue their work if the environmental impacts are minimal.

It will be stated in the policy recommendation that if on-site monitoring is used, the following will be required:

- staff employed to do on-site monitoring
- increase in permit fees to support monitoring staff

The group suggested that until further data surfaces addressing the environmental impacts of log salvaging and until the permitting process changes, monitoring will be self-reporting by the permittee and spot-checks made when possible. Conditions will still be made on the permittee according to the sensitivity of the environment in the area that logs are being salvaged, and permits will be revoked if submitted data has been falsified. It was suggested that, WRC and DMF help with monitoring and doing spot-checks when possible. It was also suggested that CAMA permits for logs salvaging expire after one year so new information can be assessed for possible permit conditions. Stopping the issuance of permits would require a legislative moratorium placed on log salvage permits until data concerning the environmental impacts of log salvaging has been researched.

-Piling removal vs. log salvaging: Permits are not required for piling removal. Piling removal is not considered development. CAMA permits are development permits and log salvaging comes under this category. The committee discussed snagging operations and Kent Nelson stated that snagging can cause serious negative environmental impacts on fisheries habitat. It was also stated that various fishing activities such as trawling and clam kicking create a great amount of turbidity while the turbidity created by salvaging logs is minimal in comparison.

The question was raised about regulating piling removal and it was stated that an action such as that would include changing laws by the General Assembly. There are conditions placed on snagging that may need to be investigated as a model in placing conditions on log salvaging.

-Should permits for log salvaging give an exclusive right? If so, how extensive?

Because DCR permits are exclusive permits, the issue is moot for CAMA permits. Yet, the question remains should log salvaging permits be exclusive for private economic advancement?

According to Steve Claggett and Richard Lawrence, DCR permits are exclusive so that groups are not creating tremendous disturbance of underwater artifacts and to give the permittee ample opportunity to make their discovery. Anyone can search underwater for artifacts or shipwrecks, but nothing can be disturbed without a permit. DCR limits their permit applicants to four, one-mile stretches and a group is allowed only one permit at a time. This method encourages credibility and eases monitoring through the stated area limits. There is no written Attorney General opinion on DCR=s choice to limit the permitted area to four, one-mile stretches.

DCR can place a stipulation on the permit that work must occur during the permitted one year to justify renewal of the permit.

It was mentioned that the Attorney General's opinion stated that log salvaging is not covered under the Mining Act.

Mr. Chamberlin stated that the problem that their operation was having was not in the area restrictions, but existed due to the lack of ease in moving from a permitted location to an unpermitted location through modification of the original permit. In response to this comment, the need for a programmatic EA or EIS was stressed so that moving from one site to another within the same basin or river would be more feasible. Mr. Chamberlin did state that exclusive rights to an area would be beneficial to the log salvager and the environment to reduce potential disturbances and negative impacts. Granting exclusive rights during the permitted time could be beneficial or detrimental depending on various issues. It was stated that the DCR would need to get an opinion from the Attorney General's office to determine if granting exclusive rights to the log salvagers is acceptable. DCR's system does appear to be working well.

-Develop use standards/BMPs: The group is interested in this subject matter and if time permits, use standards/BMPs will be suggested in the policy recommendation. A sub-committee will work on this issue as time permits. Volunteers from the meeting include Bob Stroud, DCM, Bennett Wynne, WRC, and the team will request someone from DMF in the Wilmington and Elizabeth City office to work on this sub-committee. The log salvagers will be contacted for their opinions.

Standardized conditions on permits, i.e. water depth, shoreline distance, etc.: The use standards/BMPs and the programmatic EA or EIS would supply information for this issue. Yet, as was stated during the meeting, some sites may require specific conditions in lieu of the programmatic EA or EIS.

Extraction vs. excavation: If log salvaging is deemed as excavation, the activity will fall under the Dredge and Fill Law. Taking logs from the bottom of the river without digging below the bottom is deemed as extraction. The BMPs that would be developed would include extraction, but not excavation. For those permit applicants in non-CAMA counties, DCR could get an environmental opinion about the application. (-Extraction: drawing or pulling out forcibly; obtaining despite resistance; drawing forth with great effort -Excavation: making a cavity or hole in; hollow out; removing by digging or scooping out; exposing or uncovering by or as if by digging; engaging in digging, hollowing out, or removing. (*The American Heritage Dictionary*, Second College Edition, Houghton Mifflin Company, Boston, 1985.)

Site specific conditions per permit modifications: This needs to be related to the need for knowledge of the potential environmental impacts that log salvaging can create. This subject is included in the SEPA Review section.

11:30 Group C: SEPA (State Environmental Policy Act) Review

Programmatic EA=s/ EIS= be required: Doug gave a brief description of an EA (Environmental Assessment) and an EIS (Environmental Impact Statement) to help the committee understand what it is and how it will be useful. Basically, it is a decision making tool for agencies making decisions about how a project could potentially impact the environment. A SEPA Review is supposed to be used to provide information and not to be used as a permitting tool. The SEPA document states what impacts are expected. These documents are needed/required when the project involves state-owned land, money, and/or resources. This document is sent to all relevant environmental agencies for their review to consider in issuing a permit for a project. Comments are made to the state clearinghouse where they are considered and depending on the comments and the results of the EA, an EIS may be required. A programmatic EA is prepared by someone as a base document and explains all of the possible impacts and information on mitigation. It would also offer areas where logs may be salvaged and located within the rivers. The existing log salvaging permit process has required the applicant to produce EA=s. For CAMA permits, if a SEPA review is required, a permit cannot be granted until the SEPA review is complete. A question that was raised was that if DCR does not feel that they can evaluate an environmental document, should an EA be required for non-CAMA counties?

Donna Moffitt stated that a project can create environmental impacts and still be permitted. The concern is with how the departments are using the SEPA review. The CAMA permitting process is often slowed

because of how other divisions use the SEPA document. There is no appeals process for the applicant to speed the process along.

DOT uses programmatic EA=s, but not EIS=. The CAMA permit applicant usually is requested to do the SEPA document so that the process is timelier. It would be of interest to the team to examine the method that DOT followed to accomplish this document. The question of who would fund the SEPA document was raised. Possibilities include:

- the current log salvagers help fund the programmatic EA/EIS
- apply for grant money
- each review agency could contribute to the completion of the document
- ask DENR to fund the document

The WRC was suggested as the lead agency. Bennett Wynne and Kent Nelson said that they would check with senior management to check into getting a contractor to develop the SEPA document. Of course, all other review agencies would be expected to assist when needed during the document development process.

Ideally, the programmatic EIS would examine all of the areas of research interest. The programmatic EIS would focus on the area of the state from the fall line eastward. The area West of the Piedmont could possibly fall under a case-by-case requirement of an EA or EIS. The programmatic EIS could take two years or more, but in the interim log salvaging would not be encouraged nor would an applicant be denied an opportunity for application for a log-salvaging permit. The *programmatic EIS* would be beneficial for the following reasons:

- illustrates gaps in research to determine areas that will require greater attention during the permitting process
- provides a base of information for all log salvage permit applicants
- the document will help prevent the delay of approving or denying permit applications
- the document will take the burden off of the permit applicant to produce an EA for each application
- determining the number of operations that can operate at one time in the same river as well as the size of operation that is acceptable

After reviewing the SEPA document, certain areas of rivers may be determined to be off limits to log salvagers.

The issues that will remain to be researched include, but are not limited to:

- turbidity
- toxics
- the impact on fish habitat
- mitigation of fisheries habitat loss

Two possible choices of what can be recommended to DENR concerning the permitting of log salvaging:

- State that serious data gaps exist and recommend that no permits be issued for log salvaging until the data requirement can be filled.
- Fill the data gap as information arises and continue to permit log salvaging under the existing permitting process with relevant conditions on each permit.

Al Purdy offered that Superior Water-Logged Company mitigates some loss of fish habitat by placing 15 one-foot cinder blocks in the area that the logs were removed.

The issues of having the appropriate amount of research to support decisions and determining the various impacts of operations based on size would be determined through a programmatic EIS.

More specific scope of work area: To understand the impacts at specific sites, the applicant may have to supply an addendum to the programmatic EIS. The requirement may be as simple as stating the water depth and the fish habitat of that area.

Who coordinates review in non-CAMA counties? Presently, the DCR issues log salvaging permits to those applicants in non-CAMA counties. The DCR does not use environmental impacts in their decision

making process. The team suggested that the request be made to the US Army Corps of Engineers, Wilmington District, to accept jurisdiction in the log salvage permitting process. The team would like to go ahead and act on this item and request the DENR Secretary, Bill Holman, to send a letter to the Colonel in the Wilmington COE District in relation to this issue. Donna Moffitt stated that she would draft a letter for Bill Holman. If the COE was to accept jurisdiction a 404 would require a 401 certification through DWQ and would also require agency comments during the process. The team stated that they would like to determine what prompted the COE to get involved in Michigan and Georgia. Steve Claggett stated that he would get in touch with people in Michigan to get information.

Schedule Future Meeting Dates:

The next 5 meetings were scheduled as follows:

January 11th, 10-1:30, Large Conference Room, Archdale Building, Raleigh

Discussion: Impacts on Habitat

January 24th

February 11th

February 29th

March 16th

All of the meetings are tentatively scheduled to begin at 10:00am. If anyone would like to meet in a different location from Raleigh, please contact Kelly Rudd with that request. Any suggestions of speakers to invite to the meetings, papers, research, or articles are also encouraged. Future meetings other than those stated previously will be scheduled as/if needed.

Public Comment:

Al Purdy: On the issue of enforcement: The USFWS often travels the rivers/coast and checks permits of those on the water. If someone is found in violation, the person could lose their permit, lose the option for renewal, and receive fines.

Mr. Purdy stated that he had a video of a log being removed from the water and will bring this video to the next meeting on January 11th.

Mr. Purdy stated that he was not interested in anything on the bottom of the rivers except for old-growth saw logs. In regards to the discussion of standard conditions on permits, he stated that the depth and shoreline distance was variable to the location of the logs being salvaged and a standard formula may not be feasible.

Vance Chamberlin: In reference to the 30% of log value as compensation in Wisconsin, he stated that was not economically feasible for the salvager when considering the cost of the operation and the taxes already imposed on the act of retrieving and selling logs. Donna Moffitt stated in response to this statement that the team appeared to be more concerned with the habitat and resource issues at the present moment. Mr. Chamberlin also stated in reference to monitoring permit conditions that the incentives to abide by the permit conditions was present considering the repercussions that could result if conditions were not met. Mr. Chamberlin stated that he still did not understand the difference of removing pilings and salvaging logs. He also asked the purpose of the EIS? The answer was that it would prevent the salvager from doing an EA every time a permit application was submitted or modification was requested. Although a site specific addendum may still be required regardless of the programmatic EIS.

2:15 Meeting adjourned

January 11, 2000

**Submerged Log Salvage Policy Development Meeting
Tuesday, January 11, 2000**

Attendees:

Donna Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Kelly Rudd, Division of Coastal Management
Bob Stroud, Division of Coastal Management
Mike Street, Division of Marine Fisheries
Sara E. Winslow, Division of Marine Fisheries
Kent Nelson, Wildlife Resources Commission
David Heeter, Attorney General's Office
Bill Pickens, Division of Forest Resources
Steve Claggett, DCR-State Archaeology
Cyndi Bell, Division of Water Quality
Wanda King, State Property Office
Jim Stephenson, NC Coastal Federation
Bennett Wynne, Wildlife Resources Commission
Renee Gledhill-Earley, DCR-State Historic Preservation Office
David Rabon, US Fish & Wildlife Services

Vance Chamberlin, Riverwood Logging Co.
Frank Taylor, Riverwood Logging Co.

10:00 Meeting was called to order and changes were made to the agenda. Al Purdy was not able to attend the meeting due to illness and five minutes was allotted at the end of the meeting to set the agenda items for the meeting on the 24th. Four changes/additions were made to the minutes. On page 3, second paragraph, the word trolling was corrected to be trawling. On page 4, second paragraph, third sentence, add that the request was also made that someone from the Elizabeth City Office be a part of the Use Standards/BMPs subcommittee. Page 6, middle of the page, line 21, a spelling correction was made to centerblocks, making it cinder blocks. An addition under Group C section, SEPA, was made that the programmatic EIS and team's policy recommendations would focus on the area of the state from the fall line eastward. After the corrections were noted, the minutes were approved.

The Use Standards/BMPs (Best Management Practices) Subcommittee consists of Bob Stroud, Chair, Richard Lawrence, Sara E. Winslow, Fritz Rohde, and Bennett Wynne. This group will meet to discuss potential log salvaging Use Standards and BMPs to be included in the policy recommendation. The subcommittee will report their recommendations to the team at the February 11th meeting.

Donna Moffitt distributed the memo and letter that was sent to Secretary Bill Holman concerning the request to have the Wilmington District COE Col. DeLony assume jurisdiction over log salvage operations. This will allow for better environmental review when operations occur outside CAMA counties.

Steve Claggett reported that he had attempted to reach his contacts in the northern states concerning the log salvage issue, but has not received a response as of yet. Richard Lawrence did contact South Carolina's Department of Cultural Resources and learned that South Carolina's permitting process is similar to North Carolina's in regard to the DCR permitting process. Steve stated that South Carolina does not consider environmental impacts when granting permits.

Mike Street requested clarity from Dave Heeter concerning the jurisdiction of permits in the future. It was suggested that DCR maintain jurisdiction in the non-CAMA counties and hopefully the COE will get involved so that the environmental impact concerns will be addressed in non-CAMA counties= rivers.

10:30 Group A: Impacts On Habitat

Issue 1: Potential fisheries habitat loss

The DMF and the WRC have similar concerns with this issue. The most important concern of the two includes losing fisheries habitat and spawning areas. As was stated by Mike Street, piles of submerged logs create an unevenness on the bottom of the riverbeds, which is important for staging areas for spawning. Lacking detailed surveys of each site prevents the determination of the amount of fisheries habitat that is lost. Bennett Wynne stated that it is difficult to know how log piles contribute to fisheries habitat, but that the log piles could be important in guaranteeing a variety of fish species by providing blockage and shelter from water flow. Kent Nelson agreed with the statements of Bennett and Mike, and questioned the proportion of habitat that is provided by sunken saw logs. Kent added that logs with branches and roots provide better habitat for fish.

Donna Moffitt then posed the question of how to receive information concerning how much habitat the submerged logs are providing unless a study is completed.

Bob Stroud stated that the submerged logs are 200 years old at best and that the adaptability of fish is strong. Removing the logs would not create a hardship on fisheries habitat under the existing permitting process. Bob stated that no other comparable group could prove that the piles of submerged logs provide a significant amount of fisheries habitat, but noted that there are regional differences. Sara Winslow followed up stating that the impact in the Cape Fear River is different than the impact in a river that is only 12 miles long (Perquimans River). Bob discussed that clam kicking and trawling near these areas was detrimental to fisheries habitat and that log salvaging should have the same consideration as these activities. Clam kicking and trawling have continued to be allowed because of the economic results of these activities. Mike Street stated that clam kicking and trawling were controlled and monitored and that it was prohibited in primary nursery areas (PNAs). Mike said that the viability of the varieties and diversity of fisheries habitat depended on the edges of the rivers where fish live and feed. It was also stated that snagging is allowed only as much is necessary for navigational purposes.

Possible permit condition recommendations that were taken from this discussion include the following:

- 1-That log recovery be allowed only in the main channel of a river with designated distances from the banks of the river. If the area permits snagging, it would be acceptable to log in that area.
- 2-A more specific description of the site is needed to determine the significance of impacts to fisheries habitat.
- 3-To ensure the viability of the variety and health of the fisheries habitats, the applicant be required to provide data of the types of fish that exist within the proposed site area since it is an existing public resource.
- 4-Because the value of submerged saw logs to fisheries habitat has not been determined, assume that all logs are important to fisheries habitat and require one to one replacement. Doug Huggett stated that a possible BMP could be requiring that for every log that is removed, something must be put in its place.

The discussion concerning 1:1 replacement for mitigating the areas where logs are removed continued with concerns that this requirement may be extremely burdensome to the applicant and that the CAMA permitting process may become more difficult because the replacement may be seen as discharging into navigable waters. The point was made that shellfish areas have artificial materials in place to ensure diversity of habitat. Also noted was that the Dredge and Fill Law should not be applicable if this activity is encouraged or required. David Rabon did comment that this 1:1 replacement could be pursued as restoration to the area after the work is completed. The type of material to be used as replacement is still undecided.

Kent Nelson stated that he liked the idea of 1:1 replacement, but that the state agencies involved in this process have not always been successful in mitigation through habitat. To determine what types of materials could be placed underwater in place of the removed logs, the DWQ could provide the standards of what is allowed so as to not discount water quality.

The recommendation of the group concerning this issue is to encourage 1:1 replacement until the programmatic EIS and further research can be completed.

Issue 2: How to quantify the number of logs providing habitat

The team decided that this issue falls under issue #1 and that the programmatic EIS would need to be completed before there is a thorough understanding of the issue.

Issue 3: SAV habitat impacts

Bob Stroud and Doug Huggett stated that they did not think that allowing logs to be salvaged in SAV areas would be in the best interest of protection of the environment. They felt that a buffer area needed to be established around the SAV areas because there most likely would be a negative habitat impact in SAV areas. An additional recommendation was that if logs were lost in SAV areas during recovery attempts that the log would have to be left there.

Presently, the Lost and Found Lumber Co. is bound to salvaging 100 feet from the shoreline and the water must be at least 7 feet deep before salvaging operations can take place. The usual SAV grows no deeper than 4 to 5 feet deep, but some species of SAVs can grow at deeper levels. The team did recommend that the policy should establish width and depth limits of areas where logs could not be retrieved.

Issue 4: Protection of existing uses, i.e. fisheries habitat and water supplies

The question was asked how dredging requests and log salvaging requests were different. The answer depends on whether or not the activity will interfere with navigation of the rivers.

The team discussed banning log salvaging in areas where there is industrial intake of water and intake for water supply. The team also wanted to keep in mind the already documented protected areas and not allow submerged log removal in those areas. It was determined that the EIS will provide an inventory of existing water uses and this will be helpful in determining areas that log salvaging will not be allowed.

Issue 5: Discern whether logs are in an anaerobic setting

Two questions that were asked: AIs it anaerobic because the log is under sediment?≡ and AAre the logs in anaerobic water?≡

Bennett Wynne stated that the conditions of the water change depending on the season and the water temperature. Sometimes the water may be anaerobic when other times it's not. If logs are taken from under sediment then that is an anaerobic environment and will not harm fish habitat. The programmatic EIS should answer these questions and provide a better understanding of the conditions that the logs may be salvaged.

Frank Taylor stated that if the logs were not in an anaerobic area then they would have deteriorated by now. The anaerobic conditions help to preserve the logs.

Issue 6: Salvaging from smaller creeks that might be providing spawning and nursery resources (anadromous & resident species)

Sara Winslow, and the team agreed, stated that if these areas were designated as spawning areas then log recovery should not be allowed. A stream water designation needs to be made and width and depth limits also need to be made concerning the smaller creeks and canals. Adequate research will be required to determine the width and depth limits, but a suggestion concerning this matter will be included in the BMPs. The representatives from Riverwood stated that a small barge could operate in three feet of water if the area was fifty feet wide and there was not a great deal of overhead trees/limbs.

Issue 7: Seasonal salvaging limitations

Of the two already issued log salvaging CAMA permits, Riverwood does not have a seasonal salvaging limitation and the Lost and Found Lumber Co. does. This decision was based on the location of the operations.

It was stated that seasonal limitations would depend on the requested location to salvage logs. Spawning usually occurs from mid February through September and fish nursery areas need to be protected from summer through October. The limit that was placed on Lost and Found Lumber Co. was from February

15th through October 31st. The team decided they would like to set their own limits on a case-by-case basis since spawning can vary depending on the river that log salvaging is being requested. The team would also like to investigate if there are some areas/ivers where no logging would be permitted. The programmatic EIS that is being recommended will report on regional seasonal limitations. It was noted that dredging is not allowed from April through September so it would not be advisable to allow log salvaging then either.

Issue 8: Cumulative effects

The DCR's permit allows the permittee to be permitted for 4 sites within one river for one year. The permittee then has the opportunity to renew their permit. This method of permitting assists in preventing negative cumulative effects by giving the DCR the option to review the work being done and to prevent over-working an area. A suggested recommendation for dealing with this issue is to follow the DCR model of permitting. A possible problem that has not occurred to date with DCR is the same group being permitted under two different names.

The team decided that cumulative effects could not be factored into the permit at this time considering the lack of research of how the existing log salvaging operations are having cumulative effects, if any. Mike Street stated that the intensity of the operation in a given area at a given time would effect the cumulative impacts on an area. He suggested that consistency was important in permitting and that there is an issue about the potential to have exclusive franchises versus an area that one does not have the exclusive rights to for a period of time. The team requested that DCR ask for an AG opinion on exclusive rights to a public resource.

Because the cumulative effects issue needs further consideration, a subcommittee consisting of the involvement of Steve Claggett, Jim Stephenson, and Kelly Rudd would be needed. The subcommittee will make a report at the February 11th meeting.

Programmatic EIS Report: Kent Nelson stated that he had spoken with the WRC Chief about WRC taking the lead on this project. The Chief agreed as long as the other involved divisions and agencies assisted with funding as suggested at the December 16th meeting. Kent Nelson will be in charge of this effort and suggested that having an increase in permit fees would be a good recommendation to help defray some of the costs.

11:45 Lunch

12:30 The meeting reconvened.

Issue 9: Possible hydrologic effects

Possible hydrologic effects could be negative or positive depending on the location of the log salvage operations. Donna Moffitt posed the question of how to address hydrologic effects through CAMA permit conditions.

Mike Street stated that mounds create hydrological conditions for fish, insects, etc. Logs in the center of a channel are covered with sediment that creates these mounds. The logs located on the edge of a river, stream, etc. provide beneficial hydrological habitat. Removing the logs will not affect flow a great deal. Quiet zones though, do encourage habitat diversity. Habitat research needs to be conducted to research local hydrological effects on the backside of flow.

The team recommended that the programmatic EIS would answer many of the questions of how salvaging logs will affect the hydrology.

BMP Subcommittee: Q. How will the suggested BMPs/Use Standards tie into the permit process?

A. BMPs will correlate with areas as appropriate.

As stated in the meeting, Standards are measurable--used to measure application against; Conditions apply in local situations; BMPs assist in how the work should be conducted (operational procedures).

Mike Street stated that he felt that rules will have to be enacted to settle this policy issue.

Dave Heeter stated that he agreed and someone would have to be the rulemaker. He questioned how to get use standards into the rules outside of the CAMA counties.

Mike Street replied that hopefully COE will take interest and the use standards can be used in non-CAMA counties as well.

Doug Huggett stated that log salvaging permits needed to remain major permits in the CAMA counties and have no general permits.

1:10 The group set the agenda items, time and location for the January 24th meeting.

Time: 10-1:30

Location: Raleigh, Archdale Building, 14th floor, large conference room

Agenda items: Groups D, E and F if time permits

It was requested that Cyndi Bell assist with the discussion of Group D and that Wanda King and Steve Claggett assist with the discussion of Group E.

The meeting on February 11th will consist of Groups F, G, H, and I. At this meeting the subcommittees will also make their reports.

February 29th and March 16th are the scheduled meetings following February 11th.

1:15 Public Comment

Frank Taylor: Concerning the discussion of habitat, he stated that when a log is removed it is only done one time and is not going to be a recurring activity in the area. He feels he is restoring the rivers to their original condition and that saw logs are industrial waste. After removing the logs, a depression is left which can also provide habitat. In Mr. Taylor's opinion, pilings provide better habitat and the same issues exist with piling removal as has been brought up about log salvaging. Piling removal creates turbidity and affects habitat. He would like for someone to study the issue of piling removal in depth.

Mr. Taylor also stated that a report he read on Atlantic short-nose sturgeons noted that their habitat is clear, rocky bottoms, and that where they were working did not provide those conditions.

Mr. Taylor also inquired as to who had requested that a team be formed to look into the log salvage issue and Donna Moffitt answered that the Assistant Secretary of DENR had made the request.

He also asked what would happen if an agency changed their mind about their opinion of log salvaging. Donna answered that Riverwood was bound to the requirements of their existing permit and would be held to that and only those requirements until the permit expired. If decisions are made concerning this issue and the Riverwood Co. applies for a new permit then they will be held subject to the laws that are in existence at the time.

Vance Chamberlin: Mr. Chamberlin stated that on the permit that they are now working under, it states that the permit is amendable to moving locations within the area that is covered by the EA. Riverwood's request included moving from the NE Cape Fear River to the Cape Fear River in which the EA states that the same fisheries habitat, species, and environmental conditions exist in both places. He wanted to know why they had not been permitted to move their operations after they have made a formal request to Richard Lawrence, who contacted Bob Stroud. Doug and Bob said that they would get together and discuss the issue. Mr. Chamberlin also mentioned the marina clearing that is occurring in the Cape Fear and that they were digging 6-10 feet deep in the river and nothing was being done to prevent this environmental disturbance. Donna Moffitt stated that if the permittee that is clearing for the marina is found in violation of the permit requirements, then action would be taken.

Mr. Taylor asked if there is a set of mitigation guidelines. The answer consisted of someone needing to look into that issue and determine what is actually doable. It has to be determined if the mitigation has to be a kind or if it can be mitigated with different materials than those being removed.

Mr. Chamberlin inquired that if once logs are removed, isn't the hole that is left considered fish habitat? The answer to the question was that once logs are removed the velocity refuge is lost. Mr. Chamberlin

stated that everything wasn't removed, there were limbs, and small logs left behind. He also asked Mike Street what percentage of river bottom is perceived to be affected? Mike's answer was that he did not know and that the effects most likely vary depending on the location of the operation.

The team requested that Mr. Chamberlin and Mr. Taylor develop averages of what is in the salvaging area and how much is removed. David Rabon asked if turbidity had been measured. Bob Stroud answered that turbidity was measured on piling removal and none was observed from the surface, although some DO (dissolved oxygen) existed. It was also stated that habitat and turbidity aren't substantially affected after a hard rain produces run-off that flows into the water and creates turbidity.

1:30 Meeting adjourned

January 24, 2000

Submerged Log Salvage Policy Development Meeting Monday, January 24, 2000

Attendees:

Donna Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Kelly Rudd, Division of Coastal Management
Bob Stroud, Division of Coastal Management
Sara E. Winslow, Division of Marine Fisheries
Bill Pickens, Division of Forest Resources
Steve Claggett, DCR-State Archaeology
Cyndi Bell, Division of Water Quality
Bennett Wynne, Wildlife Resources Commission
Jim Stephenson, NC Coastal Federation

Vance Chamberlin, Riverwood Logging Co.

10:00 Meeting was called to order and adjustments were made to the agenda. Al Purdy was not able to attend the meeting due to adverse weather conditions so the viewing of the video will be scheduled for the February 11th meeting. The issues of Public Trust, Impacts on Property, and Local Community Interests were added to the agenda due to availability of time for this meeting. The issue of mitigation will be scheduled for the February 11th meeting. Two changes were made to the minutes. On page 4, Issue 6, first paragraph, the last sentence was corrected to read AThe representatives from Riverwood stated that a small barge could operate in three feet of water if the area was 50 feet wide and there was not a great deal of overhead trees/limbs.≡ On page 5, first paragraph, second sentence, the dates should read as February 15th through October 31st. The minutes were approved after the corrections were made.

10:15 Group D: Water Quality

Issue 23--Maintain water quality standards (metals, turbidity, dissolved oxygen, toxic hazards, etc.) Cyndi Bell briefly discussed the water quality standards that the log salvagers would need to adhere to. Cyndi stated that the Division of Water Quality (DWQ) makes classifications about water bodies determining their level of sensitivity to negative environmental impacts. The Environmental Science division of DWQ has monitoring stations that regularly monitor physical, chemical, and biological factors of the water and also determine if the streams are maintaining their designated uses. The area that would need investigation in relation to water quality standards would be the supplemental classifications for fish. Sara Winslow and Jim Stephenson also agreed that the Nutrient Sensitive Waters (NSWs) and the high quality water bodies should also be areas of concern when considering the environmental impacts that log salvaging may have due to the fact that so much information is still unknown. A questions was raised about whether log recovery had any appreciable increase in nitrogen. To date, the DWQ has not monitored the log salvaging activities that have been permitted.

Doug Huggett stated that a 401 review can be requested during the CAMA permit application process and can only be required when a 404 is issued by the COE. It is not routine for the DWQ to review applications for underwater development/removal. The DWQ does have requirements for dredging, but to date, no DWQ sampling has been conducted on dredging activities.

Bennett Wynne inquired about the toxic sediment studies that had been written, one by Riggs and one by Hackney. These studies have not been published as scientific peer reviewed documents and cannot be used as proven factual information although they can be used as tools in the team's process of reviewing the log salvaging issue.

Cyndi stated that in reference to the turbidity issue, although sediment appears to settle out quickly, there are elements that are not visible and if present could have environmental impacts. This type of concern would be relevant in water intake areas and in fish habitat areas. It was suggested that log salvaging be limited to Class C and B waters. (The classification system is based on DWQ's classification.) Hackney discusses Hot spots as areas in a water body that are extra sensitive to environmental impacts. It was stated that the thresholds that Hackney used in determining these Hot spots are lower than the DWQ's and that the methodology that was used to choose the hot spots is not fully understood. Because these areas are not technically classified as an area of concern and because of the Unknowns, recommendations will be based on existing water classifications. The programmatic EIS may rely on Riggs and Hackney's documents or the study may require that a study be completed concerning the issues of impacts on water quality and/or fish habitat.

Several suggestions were made as possible recommendations to handle the issues of concern until the programmatic EIS is completed.

- 1-Certain areas in the water bodies could be designated as off limits to log salvaging.
- 2-A sampling of the dissolved oxygen (DO) and turbidity could be required to be completed by the permittee. A concern with this suggestion is that once a CAMA permit is issued, it would be difficult to revoke the permit based on the study completed by the permittee because there are no thresholds determined for this activity. For CAMA permits, certain requirements can be made for monitoring, but requiring that a scientific study be completed for use in any other way is not allowed. If monitoring data was collected for a CAMA permitted area, the data would go to DCM first and then to other divisions as requested. It was stated that DO and turbidity would not be difficult to test, but sampling for metals and other toxins would be more extensive and expensive.

Bill Pickens brought up the point that the value of monitoring needs to be evaluated. The team agrees that the magnitude of the impact verses the magnitude of hardship on the permittee is a real concern and determining how the team can set standards when there are so many unknowns is a difficult task. A balance needs to be reached between regulating the log salvagers and being too strict. Doug Huggett made the point that even if bioaccumulation was determined to be present in fish, determining the cause for this pollution would be difficult. It was stated that if sampling and testing the water was required within DENR, the DWQ's Environmental Science division would be the area responsible for the process. It was suggested that information be collected as to where the existing monitoring stations are located to determine if there are collection sites near the existing log salvage operations. Yet, a change in results if this were possible may be difficult to link to the operations of the log salvagers.

A re-statement of the purpose of this discussion was made that the team did not want water quality standards violated (especially DO and turbidity), but the group cannot be sure that this activity will violate the standards. Because during certain seasons DO is more of a problem, it is believed that log salvaging in the summer could potentially cause more of a concern. Bob Stroud stated that he and the subcommittee working on BMPs would try to address this issue as well.

Donna Moffitt stated that the team needs to provide short-term and long-term recommendations and to encourage additional research, and to include in the recommendations that as additional information

surfaces adjustments may need to be made. The programmatic EIS may lead the team to lessen or tighten conditions in the future. Until further information is available, the recommendations for this issue includes designating areas that log salvaging activity should not occur, to use turbidity curtains as necessary, and to follow BMP recommendations for water quality.

11:00 Group E: Ownership/Compensation

Issue 24--State ownership of logs: According to previous statements, the State Property Office, under the abandoned property clause, does claim ownership of the old-growth submerged logs. The custodian of this state property is the DCR. Previous ownership claims could be made, but it would be a very time-consuming and difficult process for the claimant. It has been noted that stamps have been seen on some of the retrieved logs, but no identification of the previous owner has been made.

Issue 25--Should royalties be collected, who should collect them, and how should the royalties be used? Only the State Property Office, the DCR, and the DFR can collect any type of compensation. The State Property Office has not requested compensation and has expressed no interest in doing so. The DCR has not collected permit application fees in the past, but could place a permit fee on the applicants if deemed necessary. CAMA permit application fees are at a set amount of \$400 for major development permits and the use of this money has been pre-determined by law.

The DCR can collect compensation through receiving part of the find. In this case, the DCR would be given a certain number of logs depending upon several factors. The DCR is not interested in receiving a percentage of the retrieved logs as compensation. If the DCR received the logs and sold them the money would be designated to the General Fund. The DCR is interested in any artifacts related to logging, etc. that may be found. The DFR stated that a Primary Processor=s Tax could be collected through the Department of Revenue. The money that is earned through this fund has a designated use to assist in funding reforestation. Reallocation of the money earned for mitigation of the log salvaging sites would most likely not be supported by the DFR and would require a rule change. Bill Pickens stated that he would speak to a Utilization Forester as to what steps needed to be taken to enact the Primary Processor=s Tax on the log salvagers. The amount should not be burdensome to the salvagers.

It was mentioned that monitoring and mitigation may require money and that possibly the DCR could potentially charge permit fees to be used for these activities. It was stated that Riverwood offered to compensate the state, but the money was not accepted. An option could be suggested in the future that log salvagers voluntarily compensate the state.

The question was asked if the team wanted to pursue additional fees through legislative action and was answered that it may be best to leave the situation as it exists so as not to create bureaucracy. The current two avenues to receive money from log salvagers appear more to be through the Primary Processor=s Tax and through the possibility of the DCR charging a permit fee. It was stated that the State Property Office does not usually get involved with DCR=s permitting process. More information will follow as provided concerning this subject. Donna Moffitt stated that she had spoken with several government employees of the southern states and that their thoughts were similar to that of the DENR team. The issue of retrieving sunken logs is relatively new, but at the present time, most of the southern states are not collecting royalties or fees. It appears that of the southern states dealing with this issue, Georgia and Florida are leading the way.

Issue 26--Documenting extractions: Riverwood is presently providing the DCR with documentation of the number of logs, wood species, and the size of the logs.

Issue 27--Determine the value of the logs: As stated by Bill Pickens and Vance Chamberlin, Riverwood, the value of the logs fluctuates and cannot be determined as an exact amount. It was stated that the Tennessee Forest Products Bulletin should not be used as a basis to determine the value of the retrieved logs.

Group F: Mitigation: This issue will be discussed at the February 11th meeting.

Group G: Public Trust

Issue 29--Log salvaging increasing navigable hazards: A major concern is that log salvaging operations stay out of navigation channels. In the Northeastern part of North Carolina there are no designated Navigable channels, only shoal markers. Regulation states that no more than one-third of a channel or stream can be blocked. Vance Chamberlin stated that Riverwood does not leave their equipment overnight. It is the smaller streams that really need limits. A specified distance from the shore and a specified working depth need to be determined. A distance from bridges that log salvaging will be allowed needs to be determined as well. The BMP subcommittee will investigate this issue and make a report at the February 11th meeting.

Issue 30--Impacts on public trust and conflicts: It is possible that log salvaging can be taking place in A good fishing areas and therefore impede some fishermen. The use of public boat ramps is a concern as well. Public boat ramps should not be used for commercial use and the operation would need to be a certain distance from these public ramps. Mr. Chamberlin stated that Riverwood had been careful of this and courteous to fishermen during their operations. It was also suggested by a team member that log-salvaging activity be limited to a certain distance from municipal waterfronts. The recommendation by the team for this issue will be that log salvaging be limited to certain distances from municipal waterfronts, public boat ramps, and bridges, and that public boat ramps are not to be used to facilitate their operations.

Issue 31--Impact of salvage on cultural resources: When the DCR reviews the permit applications, they look at records and other data to ensure that the proposed log salvage operations will not interfere with known underwater cultural resources. A condition is added to the permit that if anything is found or accidentally retrieved other than logs they are to notify the DCR immediately. This method will be the recommendation in reference to this issue.

Group H: Impacts on Property

Issue 32--Riparian property owner rights considered: The team stated that an area or A zone of avoidance should be determined for the log salvagers. This would state the distance the salvagers would have to maintain from piers, commercial fishing gear, and property. If the riparian property owner does not want the logs removed, it will be between the log salvager and the property owner to discuss this issue.

Issue 33--Retrieving logs from the river via public boat ramps, pulling up banks, etc.: In the recommendations made concerning log salvaging, it will be recommended that riparian property owners not be allowed to pull sunken logs up the banks of the water body. It will be difficult to enforce this recommendation, but should be made just the same. Using public boat ramps for any kind of log retrieval is recommended to be prohibited.

Group I: Local Community Interests

Issue 34--Potential positive economic impacts to the local community: No one from the Department of Commerce has expressed interest in this matter even though the DOC was invited to attend team meetings. Possible economic impacts discussed by the team include employment and supplies. Although possibly not significant, some economic benefit may result from log salvage operations, especially in the very small towns. Riverwood operates in Navassa in Brunswick County. It is the company's intention to hire 15 to 20 employees in the future so there could be a somewhat significant impact for Navassa. In the case of the Lost & Found Lumber Co., the county wrote a letter in support of their operations.

12:15 Public Comment

Vance Chamberlin of Riverwood stated that using turbidity curtains in a 5 knot current would require buoyancy to the curtain, anchoring to keep it in place and would be extremely difficult to do. Using a turbidity curtain in a fast current is not practical, especially considering tide changes.

Mr. Chamberlin requested a description of a municipal waterfront. The answer included describing areas where businesses operate on the waterfront, as happens in downtown Wilmington. It was stated that the Lost & Found Lumber Co. is allowed to operate in an active urban waterfront area and near a public access. Team members stated that there are visual impacts and as Mr. Chamberlin stated operating in these areas

could create liability issues. A buffer requirement was suggested and will be reviewed by the BMP subcommittee.

The team discussed the turbidity curtain issue and would like to see a video of a turbidity curtain being used. It was requested that Kelly Rudd try to locate a video to view that may be available through the DOT.

12:30 Meeting adjourned

February 11, 2000

Submerged Log Salvage Policy Development Meeting Friday, February 11, 2000

Attendees:

Donna Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Kelly Rudd, Division of Coastal Management
Bob Stroud, Division of Coastal Management
Mike Street, Division of Marine Fisheries
Kent Nelson, Wildlife Resources Commission
Bill Pickens, Division of Forest Resources
Richard Lawrence, DCR-Underwater Archaeology
Cyndi Bell, Division of Water Quality
Jim Stephenson, NC Coastal Federation
Bennett Wynne, Wildlife Resources Commission

Vance Chamberlin, Riverwood Logging Co.
Al Purdy
Greg Purdy

10:00 Meeting was called to order. No changes were made to the agenda. One change was made to the January 24th meeting minutes. On page 3, last paragraph, 4th sentence, it should be stated as AIf the DCR received the logs and sold them the money could be kept within the Department of Cultural Resources.≡. After this correction, the minutes were approved.

The team viewed a video provided by Al Purdy. The video illustrated logs being removed from river bottoms and discussed some of the methods that log salvagers use to remove the logs from the water. The video provided information about how Superior Water Logged Co. locates and retrieves logs from the bottoms of rivers and lakes. It is their practice, when this video was made, to use a sector-scanning system that will illustrate concentrations of logs. Once the logs are identified to be useful to the company, a barge is transported to the location and the logs are retrieved. It was reported in the video that not everything in the identified concentration is brought to the surface. Logs of 8 to 10 inches in diameter or greater are the targets for retrieval. It was also stated that less than 5 % of the submerged logs in the area shown are saw logs.

It was reported in the video that the logs are preserved over time because of the cold-water temperatures and the low oxygen levels that are present where saw logs are found.

Al Purdy commented that the method used in the video is similar to the method that his operation will be using. Working depths for the Purdys will range from 10 to 30 feet deep. The process is completed with a diver swimming down, driving an Aice screw≡ into the log, attaching a hooked air bag to the Aice screw≡ and inflating the air bag, which brings the log to the surface. As stated by Mr. Purdy, only three to four logs can be removed per day when using this method. The logs are covered under sediment, which keeps

the logs in anaerobic conditions. When the logs are removed the sediment falls back to the bottom of the river. As stated by a team member, the rate and location at which the sediment settles depends on the current of the river. Mr. Purdy stated that his operation is interested in Tupelo and Cypress logs of 10 inches in diameter or greater. In Mr. Purdy's proposed log removal site(s), a great deal of deadfall does exist and of the woody debris present on the bottom of the river, saw logs probably represent less than 1%. Visibility in the proposed logging area, Devil's Gut in Martin County, is approximately 6 inches and the location of the logs varies between the channel and edges of this water body.

The Log Salvaging Permit for Al and Greg Purdy falls under the jurisdiction of the Department of Cultural Resources. The permit was pending at the time of the meeting, but conditions were being placed on the permit to restrict the Purdy's from harvesting logs from February 15th to October 31st and to prevent log salvaging in areas where submerged aquatic vegetation (SAV) is present. Richard brought a copy of the draft permit to the meeting for everyone to view.

Update on letter to Col. DeLony with COE-Wilmington District: Secretary Holman reported that he would wait to send the letter to Col. DeLony until after the team's process was complete. After reviewing the report, Secretary Holman will determine whether or not to send the letter. If the letter is not sent, he will make recommendations of how to handle the issue of having no environmental review when permitting in non-CAMA counties. It was stated in the meeting that the team needed to remember that the General Assembly has the option to relieve log salvagers of CAMA permits because there is a question of whether or not log salvaging is development.

10:40 Review of January 24th meeting recommendations

Group D: Water Quality

Issue 23: Maintain water quality standards: A team member brought up the issue of sediments and stated that there should be a way to get a handle on how it will create impacts. It was stated that measuring toxins and metals in sediment is expensive and would be highly burdensome to the log salvagers. The BMPs that are under construction will help ensure that water quality standards are upheld. A team member stated that there are numerous research gaps and that a list should be made so that the programmatic EIS will be sure to address all issues of concern.

Mike Street suggested that knowing the previous uses of the land, the bank and surrounding area of where log salvaging operations will occur, would help determine what types of pollutants the sediment may hold. Donna made the point that these operations move and it may be difficult to set up monitoring and sampling sites. Bennett suggested that dissolved oxygen (DO) and turbidity measurements could be collected. Bill brought up the question of when would be the appropriate time to monitor--immediately after the log has been brought to the surface? After each log? At the end of the day? etc. He stated that turbidity will vary depending on when the monitoring is done and questioned when the monitoring would be significant to determining whether or not log salvaging remained within water quality standards. Doug pointed out that monitoring may be extremely burdensome for the log salvager and will provide a benefit for other possible log salvagers in the future, but will not produce real benefits for them. Mike suggested that this type of study would be a good project for a graduate student to complete and it was suggested that WRI may give grant funding for a project of that type. It was decided that an additional recommendation needed to be added to the water quality section about needing more research data. Mike stated that the programmatic EIS will most likely recommend that monitoring be done. Donna stated in the interim of the research being completed or a moratorium being placed on log salvaging in NC rivers, a reasonable balance of conditions and standard operating procedures (SOPs) through BMPs would have to suffice. Kent asked about having area exclusions and the team agreed that would be acceptable.

Mike asked Mr. Chamberlin if his company retrieved all saw logs of 10 inches in diameter or greater. Mr. Chamberlin stated that they tried to retrieve logs of 10 inches or greater, but that there are some saw logs left in that area that are not beneficial for them to retrieve due to the expense involved. Most likely, after leaving a site, Mr. Chamberlin said that his crew would not return because of the expense involved.

Kent stated that after viewing the video and seeing that in the rivers being filmed that habitat was not affected by log removal, but every river is different and permitting conditions need to be placed on a site

specific basis. A team member asked that if log salvaging was determined to be harmful to habitat, would CAMA keep issuing permits? The answer given was that if new information arises after issuance of a permit, or before a new permit is issued, the information will be considered and changes can be made.

Group E: Ownership/Compensation

Issue 24: State ownership of logs: It has been made obvious that the state is not interested in collecting royalties on the salvaged logs. There is no need to add to bureaucracy.

Bill distributed a handout about the Primary Processors= Tax. Donna posed the question of whether or not it will be advantageous to assess the primary processors= tax on the existing log salvagers. Bill stated that it depends on the amount of board feet harvested. There is no threshold, in print, that determines whether or not the tax will be assessed. Someone in the Department of Revenue will determine whether or not assessing the tax is beneficial in comparison to the work that has to be done to go through the taxing process. Donna suggested that a possible recommendation could be that the tax be assessed on the log salvagers after the company reaches one million board feet.

Richard pointed out that there is a clause included on DCR permits that states that DCR is allowed to collect fees during the renewal period. Kent suggested to allow people to bid on the log concentrations to gain money for the state. The question was asked as to who would do this and who would assess the value of the logs. A suggestions was made to look at how other operations, like rock mining, are required to compensate the state and make a comparison between the two. This may be done in the future, but the team is not prepared to address this subject.

Issue 26: Documenting extraction: This is already a requirement of the log salvagers.

Issue 27: Determine the value of the logs: It was stated that this would not be possible. A range could be developed, but this too would change over time as logs are extracted and the resource becomes more rare to non-existent.

Group G: Public Trust

Issues 29-31: The question was asked whether or not commercial fishermen use public boat ramps. The answer was yes, sometimes.

It was stated by a team member that the state operated wildlife ramps should be off-limits to log salvager use and the use of local ramps would be up to the discretion of the local government.

Group H: Impacts on Property

More information concerning this subject is included in the BMP list. No additional comments from the team.

Group I: Local Community Interests

No additional comment from the team.

11:25 Group F: Mitigation

Mike began the discussion by stating that if mitigation is going to be required, he would like for it to be a part of the permit. There needs to be a threshold such as AIf you salvage AX≅ amount of logs or less, no mitigation is required and if you salvage over AX≅ amount, mitigation would be required. Bennett brought up the suggestion made at a previous meeting about 1:1 replacement and stated that structures placed on the surface of a river is more beneficial to fisheries habitat. Donna suggested a possible rule to mitigation: If logs are submerged, no mitigation required. If logs are on the surface, 1:1 replacement would be required. It was also suggested that woody debris is best for replacing fisheries habitat, but PVC pipe could work and would not release toxins into the water. Cinder blocks could be an option and very small concrete culverts could be used for replacement. If snagging or dredging is going to be taking place in the area where logs have been removed, mitigation would not be needed. It would also need to be determined if Anear-site≅ mitigation could be an option. Research is needed for this topic before decisions can be made.

Until research has been completed, something will need to be done to prevent a significant decrease of fisheries habitat. Doug asked if mitigation should be determined on a case-by-case basis or if the

assumption should be made that habitat is lost due to saw log removal and mitigation needs to occur to some degree. Bennett suggested that the assumption be made and to develop some form of mitigation to occur in the interim. Mr. Chamberlin stated that after logs are removed, an uneven surface is left and a team member made a comment that uneven surfaces are good for habitat. Bob stated that no definitive answers or literature exist to answer unknowns. His recommendation is to acknowledge impacts occur and require some type of mitigation. Donna=s recommendation for the issue of mitigation does, in the interim, require everyone to mitigate, even if it=s Anear-site≡ mitigation. After research has been completed, decisions can be made based on the research results. To answer the question of what types of mitigation objects to use a habitat creation specialist would be needed. Kent mentioned that cut & cable (submerging cut trees and attaching them to the banks with cable to keep them in place) mitigation is the standard for replacement in flowing water and that other alternatives are experimental at this point. Some rivers are full of debris such as the Cape Fear as Mr. Chamberlin pointed out. Stan Riggs, with East Carolina University, has reported that the Pamlico Sound received much of the material that was washed away in the flood caused by Hurricane Floyd. Bennett suggested that the team not get too heavily into mitigation and try to avoid impacts until the programmatic EIS is complete and more data is available. The type of operation that the Purdyσ will be conducting, by lifting logs with inflatable air bags, may not require much if any mitigation.

The final recommendation of the team is to use avoidance zones as a means to prevent significant impacts. The programmatic EIS will be used to make decisions about mitigation.

The request was made that the group break for lunch at 12:00 instead of 12:15 and the team agreed to return from lunch at 12:45.

12:00 Lunch

12:45 BMP Subcommittee Report & Discussion

Doug asked how to enforce the BMPs and what is the process for getting BMPs into regulatory form? Donna answered that the Department can adopt the team=s recommendations, but there will be a delay. Secretary Holman and DENR determined this issue was subject to SEPA and they can adopt these recommendations and BMPs.

Bob Stroud, the chair of the BMP subcommittee, stated that the draft the group had developed was nothing really new and the BMPs emphasize avoidance zones and distances that must be maintained from designated areas. The review of the BMPs began and it was stated that DWQ has GIS information on industrial outfall areas.

Hackney=s report was brought up in the discussion and Doug commented that when the Lost & Found Lumber Co.=s permit was being processed, DWQ had been given the report that identifies Ahot spots≡ according to Hackney. The DWQ found that the area of the proposed log removal did not violate water quality standards. Hackney=s report identifies areas based on a more stringent threshold than DWQ=s. Activity in the northeastern river area of NC would be halted if Hackney=s report is used as scientific data. The Rigg=s report was given to DWQ at the same time and the opinion by DWQ was consistent. It was also stated that if GIS information is available about the proposed log salvaging sites that the information should be given to the applicant. This would provide the applicant with a better understanding of where the avoidance zones are located.

The team reviewed the list of BMPs (see attached) and the following discussion occurred and/or suggestions were made. The boxes and columns will be identified within the minutes with numbers corresponding with the order that they are in.

Box #1: The programmatic EIS will identify very hot, hot spots.
Column #1: Outfalls need to be identified.

Box #2: Mike stated that PNAs are determined conservatively and many, possibly all PNAs function year round. PNAs exist in Hyde and Pamlico Counties as well as other counties and the primary river of concern is the Cape Fear from the Hwy 258 Bridge up stream. Anadromous spawning areas are seasonal and encompass 100+/- miles of river and this too can change over time.

Column #2: If log salvaging is allowed in PNAs, logging should only be permitted in the fall and early winter. The use of silt curtains may help prevent a disturbance in the anadromous fish runs. The DWQ uses these so as not to violate water quality standards.

Box#3: The team agreed that ORWs are of great concern.

Box#4: SAVs are mapped in Carteret County only. The DCM and the DMF is aware of where other SAVs are located and this information can be offered to applicants when applications are made.

Column #5: In reference to BMP recommendation of use of silt curtains, an exception would be made to log salvagers using the air pillows and eye bolts for extraction

Box #6 and Column #6 are satisfactory to the group.

Column # 7 will be reevaluated. The 200-foot buffer was stated to be too strict for log salvagers and would prevent working in some rivers altogether. The presently permitted log salvagers will be providing river and stream widths to help determine reasonable buffers.

Box #8 and Column #8 corresponds to DMF guidelines.

Boxes #9-#18 and Columns #9-#18 were acceptable to the group.

Box #19 It was stated that although many claims have been made, very few are actually approved as legitimate claims. The approved claims should be represented on GIS maps. It would be up to the claimant as to whether or not they would like to sell the logs from their claim to a log salvager. The log salvager would still need to apply for the appropriate permits to remove the logs.

Box #20 is acceptable.

Column #20 had two additions. 4.) Only 10 inches in diameter or greater logs are available for recovery. 5.) Log recovery is not allowed in depths of less than 7 feet to preserve fisheries habitat.

Donna requested that the BMP subcommittee review the BMPs again in light of the comments and suggestions made.

2:00 Cumulative Effects Report

Jim Stephenson presented the report to the team. After the report was made, the team agreed that the cumulative effects subcommittee merge with the BMP subcommittee. It was also stated that the cumulative effects will be represented in the programmatic EIS. If there are any additional comments/suggestions, please get them to Bob as soon as possible. A conference call for both committees will be held on March 2nd at 3:00.

2:30 Discussion of agenda items

The meeting for February 29th was rescheduled for March 9th. The meeting will begin at 10am and will be held in Archdale Building, Raleigh, Conference Room #1, Room 1428.

The next meeting=s agenda will include the following topics:

- *Review/Reach Consensus on BMPs/Cumulative Effects
- *Review/Reach Consensus on Recommendations
- *Review/Reach Consensus on Draft Outline
- *Set Agenda Items for March 16th meeting

2:40 Public Comment

Vance Chamberlin, in reference to the turbidity issue, stated that the Cape Fear River has a great deal of turbidity on average and after a hard rain can resemble the way chocolate milk looks.

Mr. Chamberlin posed the following questions and were answered by the team as such:

Q. How is salvaging logs and turbidity an issue? The Cape Fear River's turbidity may be due to colloidal sediment in the water. If logs are being removed from underneath sediment, doesn't that prove that the river already has a turbidity issue?

A. What may look like colloidal sediment may not be--an analysis would have to be done to answer this question.

Q. Pertaining to the programmatic EIS, will the study be completed on all of the NC rivers and be an extensive study on each river?

A. The programmatic EIS will cover the rivers from the fall line eastward and this review will take a substantial amount of time to be completed. Because of the unknowns, interim measures must be in place to protect against the impacts.

Q. Will the BMPs apply to everyone or only to log salvagers?

A. If a permit is sought, the BMPs must be followed. The review of the BMPs after the changes made at this meeting will be looked at as a whole and variances may be available depending on circumstances.

Mike suggested that GIS take a look at how a model of the BMPs will affect a log salvager. The DMF already has a list of boundaries from named bridges that could be used in fine-tuning the BMPs.

Bill made the point that the team does not need to over regulate. He also pointed out that the perception of one person should not be transformed into conditions placed on log salvagers.

Al Purdy stated that he had concern with the BMP proposal to remain 200 feet from riparian property.

Donna stated that the BMPs are in draft form and will be reviewed and edited. She also requested that the log salvagers send their comments to Bob concerning the BMPs as well as any information that will help make the BMPs more practical for the log salvagers.

3:00 Meeting Adjourned

February 29, 2000

Meeting postponed until March 9.

March 9, 2000

Submerged Log Salvage Policy Development Meeting Thursday, March 9, 2000

Attendees:

Doug Huggett, Division of Coastal Management
Kelly Rudd, Division of Coastal Management
Bob Stroud, Division of Coastal Management
Kent Nelson, Wildlife Resources Commission
Cyndi Bell, Division of Water Quality
Bennett Wynne, Wildlife Resources Commission
Sara Winslow, Division of Marine Fisheries
Steve Claggett, DCR-State Archaeology
Wanda King, Office of State Property

Al Purdy

10:00 Meeting was called to order. Doug Huggett served as acting chair in Donna Moffitt's absence. Doug announced that Cyndi would be arriving late. No changes were made to the agenda. The minutes from February 21st were approved without any corrections, additions, etc.

10:15 Review and discuss revised BMP list: Doug requested that Al Purdy join the committee in their discussion of the BMPs as to the effect that they would have on log salvagers. Doug also requested that the team keep in mind the number of unknowns concerning log salvaging and the potential environmental impacts and to keep log salvaging in perspective with like activities that occur in North Carolina's waters (i.e. dredging). Bob stated that the subcommittee and Vance Chamberlin discussed the suggestions made at the last Log Salvage meeting. Bob mentioned that he had attempted to contact Al Purdy for his comments as well, but they were not able to make contact. Because rows 1 and 3 address water quality issues, discussion delayed until Cyndi arrived. Comments concerning the various issues covered in the BMP list are as follows:

Row 2: Sara stated that the Division of Marine Fisheries is in the process of documenting anadromous spawning and nursery areas and the areas have been identified. Kent stated that some of the PNAs in inland waters have been identified and the areas in the inland waters of the Roanoke, Tar, Cape Fear, and Neuse Rivers will likely be designated inland PNAs effective July 1. It should be noted that it is the opinion of some that no work should be allowed in PNAs, but this type of regulation would eliminate work in many of the rivers in the southeastern part of NC. Bob stated that work, such as dredging, is allowed in PNAs and log salvaging would potentially have less impact than this activity in PNAs. The statement of one boat and one crew is the equivalent of one operation in that transport barges, etc. would be allowed as part of the one operation. Vance stated that silt curtains would be cumbersome and difficult to use in high flowing rivers such as the one that he is currently working in (Cape Fear River). Bob made the suggestion that the committee should table any further discussion until a full committee is present at the March 16th meeting. Al Purdy mentioned that there should be two classes of requirements for this issue based on the size of the operation, as is the case in Florida. Doug stated that the requirement of using silt curtains was not necessarily a recommendation in all areas of the rivers, but those designated as PNAs. Kent stated that it would be his recommendation that no operations occur within PNAs. Bob discussed that DOT uses silt curtains in many of their operations. He also stated that many activities occur in areas designated as PNAs and that these activities are required to use silt curtains. The effectiveness of these curtains may be questionable. Sara stated that dredging and other activities occur regularly as maintenance in coastal waters, but inland waters rarely required maintenance activities. Al mentioned that pilings, docks, etc. were regular activities that occur in inland waters and may be constructed in PNAs. Bob stated that the development of pilings may need to be reevaluated and may need guidelines and controls to address the potential impacts. **Row 2 was tabled for further discussion at the March 16th meeting.**

Row 4: Bob stated that SAV habitats will sometimes grow, disappear, and then grow back but the regulating divisions usually know these areas. Bob discussed that buffers are needed and that originally all work was restricted in SAV areas. This version includes a 300' buffer. Doug noted that this BMP is relevant to "known" SAV habitat areas. Sara stated that the waters in the Currituck area have several SAV habitat locations and that this could be problematic. Bob noted that types and frequency of SAV habitat areas varied from region to region. Doug stated that the water depth restriction should address these areas as well.

Row 5: Kent stated that all waters have peak activity periods and that the WRC would recommend that a seasonal moratorium last from April 1 through September 30th for inland areas and for anadromous fish the moratorium should include February through the end of October. Bob questioned if the WRC does sampling to determine these dates. Kent answered yes and that sampling is completed routinely. Al questioned if a silt curtain would need to be used outside of the seasonal moratorium placed on inland waters. Kent noted that he was not sure and that the question should be raised again at the next meeting. Doug stated that the DMF does not always place a seasonal moratorium on dredging activities based on the size of the operation, length of activity, etc. Doug noted that a blanket seasonal moratorium concerns him. Bennett mentioned that it should be the recommendation of the committee to adhere to the seasonal moratoriums until the programmatic EIS is completed. Doug stated that in consideration of the log

salvagers and to remain consistent with dredging activities, the size and the location of the activity should be considered as well as the use of a silt curtain when determining the length of the seasonal moratorium. Kent stated that inland waters incur spawning activities from Feb. through Oct. and that spawning occurs in coastal waters all summer. Doug discussed that if log salvagers were allowed to make the request to work during seasonal moratoriums, the decision would still be up to the permit administrators. Noting the normal seasonal moratoriums will give the log salvagers an idea of when activities are most likely not going to be allowed. Vance stated that if work is prohibited in spawning areas that he will be out of business because when the time period ends in coastal PNA areas, inland PNA moratoriums begin. Sara stated that February 15th through October 31st covered the time period that spawning activities occur for resident and anadromous fish in the Northeastern part of NC. Estuarine species differ from this area. The committee determined that they would table the discussion of PNAs and water quality issues until a fuller committee is present at the March 16th meeting.

Row 6: The committee stated that they are in agreement with these conditions and no changes needed to be made.

Row 7: The statement was made that the Roanoke River is approximately 75 feet wide and that a 25% buffer would allow for work to occur in the inner 50% of the river. Vance stated that he would agree with this. Al stated that this type of buffer could make distances from the banks too far or close depending on the width of the river. He prefers a standard 20' buffer and mentioned that the buffer ranges from 10 to 15 feet in Florida. The committee recommended that the BMP state that the buffer read 25% of the width of the river or 100 feet from the banks, whichever is the lesser. Therefore the maximum buffer would be 100 feet.

Doug stated that he had received the Canadian report in draft form, but that the issues of concern, although very similar, had not been resolved.

Row 8: Bob noted that changes had been made to read 100 feet and 900 feet buffers as relevant. Navigation and safety issues were the reasons for these buffers. A 100' buffer maintained from docks, piers, and other manmade structures is the standing recommendation.

Row 9: No changes were made and the committee agreed with the recommended BMP as is.

Row 10: The use of "heavy boat traffic" was questioned and stated that a definition may need to be provided. This BMP would be subject to the discretion of the permitting agency to determine what areas are considered those that have "heavy boat traffic." A 900' buffer established from all bridges, rail trestles, and public and commercial boat ramps.

Row 11: The recommendation was changed from "A 600' buffer must be maintained from any permanent net" to "...from any permitted set."

Row 12: An addition was made at the end of the existing statement including "or franchise."

Row 13: It was noted that during the subcommittee discussion of this issue that Vance came to a consensus with this recommendation.

Row 14: No changes were made to this recommendation.

Row 15: It was stated that the issue being addressed in this BMP is a difficult one to make a decision about considering that there are many "unknowns" about log salvaging and the potential impacts that may result from log salvaging operations. Bennett stated that in previous meetings he remembered that the assumption was made that the assumption would be made that log salvaging would affect habitat. Doug agreed and noted that mitigation had been a suggestion as a method of handling this assumption. Doug stated that mitigation could be included as a BMP. Bennett questioned if placing mitigation in the list of BMPs would be appropriate considering the "unknowns". Bob suggested that the committee could assume that habitat is affected by log salvaging operations and look at other states' decisions to determine appropriate mitigation materials. Doug stated that the mitigation materials used should not place a

tremendous economic burden to log salvagers. Bennett noted that he has concerns with encouraging mitigation without thoroughly reviewing the process. This may not be the first avenue that the committee should take to rectify potential impacts to habitat. Doug mentioned that the programmatic EIS would not be completed for some time and there may need to be some action taken before the completion to ensure the health of habitat that could be affected by log salvaging operations. Bennett stated that there are several questions that would need to be answered about mitigation, including what material to use for mitigation and how much mitigation would need to be required to protect habitat. Kent discussed that although mitigation appears to be the answer, there are unknowns about the effects that certain mitigation materials may have on habitat. Doug stated that if mitigation is inappropriate as a BMP then the decision would fall back among the DMF, DCM, and WRC on a case-by-case basis. Therefore, the decision will be as it was before this policy recommendation process began. **The committee decided to think about this issue and to discuss it further at the next log salvage meeting.**

Row 16: The committee made no changes.

Row 17: One addition was made to this BMP statement. It will read as follows: “Must have *written* approval of municipal government as a condition of permit approval.”

Row 18: The committee made no changes.

Row 19: The committee made no changes

Row 20: The following changes/additions were made:

- 2) “The use of stream bank to drag logs from the water is prohibited *for permitted log salvaging operations as well as for private riparian property owners.*”

Kent questioned the definition of small streams. Doug suggested that the 25% distance from riverbanks stipulation may address this issue. The committee agreed that the following statement would be routinely applied to permits. “In no case shall operations lead to difficulty in navigation.”

- 3) It was noted that this standard is industry regulated.

- 6) Addition: In no case will the operation have an adverse effect on public use or navigation of the water body.

11:45 Lunch

12:45 The committee continued their discussion of the BMP list going back to Rows 1 & 3.

Row 1: Al questioned if there is a Toxic Release Inventory (TRI) for NC concerning the toxic sediments issue. Doug stated that the only two studies that address this issue include Hackney’s and Rigg’s study and these are not scientific proof. Bob stated that most all dredging projects have to produce sediment analyses, but by designating where WTP outfall areas exist a sediment analysis may not be required in all instances. It was suggested that instead of stating a buffer to have the decision depend on where the logs are located in reference to where the toxic sediments may exist. Doug questioned where the sample zones are located and Cyndi stated that she would check into this and discuss it at the next meeting. Bob stated that he would also try to find information that determines DWQ recommended levels. Doug discussed that it may be better to have exclusion zones and then require log salvagers to prove that toxic sediment levels will not create impacts. Al suggested that the Nuclear Activation Analysis (NAA) performs sediment tests and Doug included that NCSU has a lab that performs these tests as well. Doug noted that this should not be burdensome to the log salvager. Doug concluded that toxic sediments in the rivers are a significant issue and needs attention. Bob and Cyndi stated that they would review this issue with DWQ as well as prices for analyses and the location of these sites to bring back to the March 16th meeting. It was stated that the programmatic EIS should address the gap of information that exists with this issue concerning the cause and effects of resuspending toxins and the effects it may have on fish. Al noted that he would bring the NAA catalog and information to the next meeting.

Row 3: The committee made no changes.

1:00 Discuss/review Recommendation List: The committee reviewed the recommendation list and made changes, deletions, etc. (see revised recommendation list attached).

The review of the draft outline was tabled until March 16th. At the next meeting it was determined that the tabled issues from this meeting would be discussed as well. A revised recommendation list will be provided for the committee's final review and approval. The next meeting will be held on March 16th at 10:00 in the Water Resources Conference Room located on the 11th floor of the Archdale Building.

1:45 Public Comment

Al stated that he is satisfied with the changes made to the BMPs.

2:00 Meeting adjourned

March 16, 2000

**Submerged Log Salvage Policy Development Meeting
Thursday, March 16, 2000**

Attendees:

Donna Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Mike Street, Division of Marine Fisheries
Sara E. Winslow, Division of Marine Fisheries
Bill Pickens, Division of Forest Resources
Kent Nelson, Wildlife Resources Commission
Bob Stroud, Division of Coastal Management
Bennett Wynne, Wildlife Resources Commission
Cyndi Bell, Division of Water Quality
Richard Lawrence, DCR-Underwater Archaeology
Jim Stephenson, NC Coastal Federation
Sandy Mort, Division of Water Quality (Aquatic Toxic)
Kelly Rudd

Vance Chamberlin
Al Purdy

10:00 Meeting was called to order. The team was given 10 minutes to review the minutes from the last meeting and to make corrections, additions, etc. Changes were noted and the approved minutes will be revised and distributed. Donna Moffitt reported that Dan McLawhorn stated that it is the policy of DENR to not place BMPs into regulation because it makes the process too restrictive. It should be recommended to Secretary Holman that if the log salvager agrees to the BMPs then no Environmental Assessment (EA) would be required. Presently, an EA is required of permittees in CAMA waters. This may be an interim solution until the programmatic EIS is completed.

10:30 Discuss "tabled" issues from the BMP list: It was noted that Rows 1, 2, 5, 15, and 20 #6 needed to be included in this discussion. Bob Stroud distributed the list of the BMPs with revisions based on decisions made at the March 9th meeting.

Row 1: Bob read the new/revised version and stated that, for decision making purposes, a sediment analysis has been requested for development located within an area where boat repair facilities exist or have existed (i.e. Bald Head Marina). The question was raised concerning Waste Water Treatment Plants' (WWTP) out-fall areas and it was stated that there has been evidence of heavy metals in the sediment surrounding these out-fall areas and that DWQ does have certain standards of acceptable levels of heavy

metals in sediment. Donna questioned how close to the WWTP's out-fall would this concern apply. Bob stated that a radius estimate would be needed to determine areas where detrimental sediment would be present. A radius between 300 and 500 feet was suggested as a buffer to prohibit development within these areas without an EA. Sara asked if DWQ has any buffer requirements. Sandy Mort reported that she is not aware of any. Mike Street questioned the distance that an operation would have to remain from the sediment so as not to resuspend the toxins into the water. Sandy stated that even oxygen exposure could potentially release toxins if they exist. She also discussed that disturbing sediments always has the potential to release toxins if they are present, but to remember that she is a technical staff member, not regulatory. Bob Stroud mentioned that the Canadian Report has a table concerning contamination levels on pages 10 and 11. Donna suggested the following recommendation: "If log salvagers desire to work within "X" feet of existing/pre-existing boat repair facilities and/or WWTPs, a sediment analysis would be required." The buffer distance would need to be determined. Bob suggested a radius of 300 feet from boat repair facilities and 500 feet from WWTP out-fall areas to provide ample area to prevent resuspension of toxins into the water body. Donna followed up by suggesting that if a log salvager wanted to work within this buffer zone, a sediment analysis would be needed.

Mike asked about the areas that have been identified in Hackney's and Rigg's reports. Donna noted that the Hackney study has not gone through a peer review and that there are serious issues about the report (i.e. cause and effect, standards were higher than DWQ, no proven causation). Mike requested a clarification if historic and existing boat repair facilities would be included because these areas are dangerous to fish. Vance questioned how a log salvager is to know where boat repair facilities were if they are no longer in existence. Mike noted that all of the pre-existing ones are not known.

The team decided that until a programmatic EIS could be completed, the following statement would be the BMP recommendation (deleting Alternatives 1-3). **"If submerged log salvage is proposed within 300 feet from a former/current boat repair facility and/or within 500 feet from former/current WWTP out-fall a sediment analysis is required."**

Mike asked if DWQ has water quality standards for sediment. Sandy stated that DWQ has water column surface levels, but no stipulations concerning sediment because there is no criterion. Sandy also reported that DWQ performs "risk-assessments" and this could be a possible avenue for evaluating suggested "hot spot" areas. The team decided that "risk-assessment" should be included in the EIS. Mike stated that he has specific concern with the following spots and thinks that they should be "flagged": the Wilmington, Elizabeth City waterfronts, New Bern waterfront (amended addition at April 11th meeting), State Port areas (i.e. Wilmington, Morehead,...), and the WWTPs in larger towns. Vance asked if they were "flagged" would development be allowed at all. Mike noted that some activity would be allowed and that it would depend on the development being proposed. Doug questioned who would do the sampling and Bob suggested that it would have to be contracted with a private lab. Vance noted the large number of pilings that are being removed at Governors' Landing in Wilmington at the Cassidy Shipyard. Donna stated that there is an issue of being equitable when making these recommendations. Doug reminded the team that the issue of toxic sediments has not been suggested as an issue of concern by resource divisions for other activities such as trawling, dredging, piling removal, etc. Richard noted that the Wilmington Harbor deepening project included the whole Wilmington waterfront. Donna noted that stringent curtain requirements had been placed on the blasting operations of this deepening project.

Donna stated that the team is proposing to place burdens on activities without scientific support. This subject needs to be reviewed in the programmatic EIS, but in the interim, the buffer distance needs to be established and whether or not work will be allowed in this area at all needs to be determined.

Sandy discussed the "risk assessment" process more in depth as a possible avenue to obtain supportive data in making a decision concerning the buffer zone. Mike suggested asking the Ecological Services of the USFWS to determine what hazards exist within the areas surrounding former/presently existing boat repair facilities and WWTPs. Doug noted that this activity places the decision on the permitting officer and that the USFWS is purely advisory concerning permits. Jim suggested that an EA be required for these areas before operations could occur. Donna stated that an EA should not automatically be required in order to

remain equitable in comparison to other activities that occur in this area. Vance noted that propellers on powerboats disturb sediments and this activity occurs all summer.

Doug suggested that the BMP state that operations must remain 300 feet from former/current boat repair facilities and 500 feet from WWTP's out-fall areas. The arbitrary buffer is an educated guess to use until the EIS is complete.

Row 2: Mike stated that PNA areas should be closed to log salvaging. Bob noted that other activities are allowed to operate in PNAs and to prohibit log removal in these areas altogether would seem biased. Mike stated that the only activity that is allowed in Coastal PNAs is maintenance of existing channels and that most likely there are no logs in these areas if they have been dredged. He also noted that seasonal restrictions should be enforced in these areas if activity is allowed. Doug discussed that these BMPs will not be departmental rule and that in this case, activities may require an EA instead of no operations in this area at all. Sara and Mike reported that many of the PNAs are well identified and that additional designations should be made later this year. Donna suggested that an EA be required if operations are proposed to occur in spawning areas during the spawning season and that no EA be required if the log salvagers stay out of these areas. Bob stated that this row, under "BMP Recommended for the Particular Situation", will be revised to state the following:

"No work is allowed within PNAs and/or documented anadromous fish spawning areas." If the log salvager proposes to work within these areas, an EA will be required. Richard requested an example of a documented anadromous spawning area. Sara reported that the eggs and larvae and getting the larvae to the juvenile stage are of most concern. She also stated that the 7 feet depth restriction and not allowing work in SAVs would help protect the anadromous spawning and nursery areas.

Row 5: In Row 5, Box 1, the question was asked if these "areas" are identifiable. The answer was that those local to the area would know this information. The team suggested that work needs to be completed to get the information recorded for log salvagers' use. Doug stated that a private contract could be funded or DCM's GIS section could pull data layers together and include as much information as possible to assist log salvagers and the divisions. Mike suggested that the programmatic EIS needs to produce maps, but that this would work in the interim. Mike also noted that coastal water PNAs are stated in the DMF regulatory book (green book) by latitude and longitude.

Vance said that seasonal restrictions were ok as long as log salvagers know where and when. Kent stated that if log salvagers propose to work within the seasonal moratorium (Feb. 15th-Oct.31st) in inland waters that an EA should be required. Vance noted that possibly one-tenth of 1% of the whole river bottom of the river is affected at all during log salvaging and that a great deal of taxpayers' money is being spent on this issue.

Al stated that the use of a silt curtain would put his operation out of business. Bob stated that this curtain would only be used in certain areas, not in whole water bodies. WRC representatives stated that the curtain would be needed in all inland waters. Bob noted that documentation is needed to support a decision like this one. The DMF representatives stated that fisheries independent and dependent data gathering has been and continues to be routinely done. Bob discussed that WRC data needs to be documented to remain credible. Doug suggested that this issue may not need to be discussed at this venue and suggested that this issue can be dealt with through permit conditions during the permit review process. The WRC would need to provide documentation to support comments concerning this issue. Doug suggested to the log salvagers present and will suggest to those applying for a permit to contact WRC and DMF to determine potential issues that may arise depending on the area that the log salvager wants to work. Doug also noted that this should be consistent with other activities. (i.e. dredging)

After the discussion about Row 5, it was decided to delete row 5. The issues of concern in Row 5 will be addressed by the EIS and in the interim, conditions can be placed on the permit by the review agencies. It was decided to delete **Rows 14 and 15** as well because these issues will be addressed by the EIS.

Row 13: Donna suggested that if log salvagers wanted to salvage logs that were exposed above the streambed that an EA would be needed.

Row 15: In the interim, this issue will be considered during the permit review process and conditions may be placed on the permit at that time. Although, it is eliminated as a BMP.

Row 19: Mike brought up the point that verifiable claimants may want to remove logs on their claim. Donna stated that he/she would still need to apply for a permit.

Row 20, #6: Bob added the needed information prior to this meeting and the team agreed with this language (including "...of the water body." at the end). This statement allows for investigation and alterations if needed.

After considering the discussion up to this point, Donna suggested that a guidance document be prepared for log salvagers that included all of the requirements and explanations.

Richard reminded the team that DCR cannot put environmental BMPs on a DCR permit unless DCR adopts the BMPs themselves. Donna stated that it should be made clear in the report that there is no way presently to add BMPs to log salvage permits in non-CAMA counties and therefore there are no environmental checks unless the Corps assumes 404 jurisdiction on log salvaging which will lead to a 401 by DWQ. Mike suggested that WRC ask their attorney about WRC's authority to adopt BMPs into their regulatory scheme, although, this would not help in the non-CAMA counties. The dilemma remains that no environmental consideration can be made about log salvaging in the non-CAMA counties. Donna reminded the group that Secretary Holman is going to wait until he receives the team's report to make his determination about asking the Corps to get involved. Bob asked about adding DCM comments to DCR permits and if it would be easier to request an attorney general opinion on whether an environmental review can be required on non-CAMA permits. Doug noted that he would talk with Steve Benton about state consistency. Bob stated that the argument could be made that log salvaging in rivers in non-CAMA counties will affect coastal areas (i.e. anadromous spawning). Doug stated that a federal permit would be beneficial and would open non-CAMA counties up for CAMA review. Donna requested that Richard seek an AG opinion about DCR requesting an environmental opinion for log salvaging permits. Richard suggested that environmental agencies could give their recommendations as conditions that DCR can simply give to the applicant instead of going through a review process with every permit. Donna noted that in the report to the Secretary, the team should state that no clear resolution exists to approaching environmental concerns in non-CAMA counties without a statutory change.

Mike stated that Coastal Habitat protection plans are not regulatory, but are plans with recommendations. The Environmental Review Commission could review these and establish authority.

Two Choices were proposed as recommendations in the final report. They are as follows:

1—Corps takes jurisdiction.

2—DCR adopt BMPs into permitting process for log salvaging applicants. DMF, WRC, and DWQ would be lead divisions to review/comment on the non-CAMA county permits.

Richard noted that he would alert DCR's Secretary that this will be included in the final report.

Row 10: Vance requested a definition of "heavy boat traffic". He requested an explanation of the 900' buffer and if a gill net is a stationary piece of equipment. The "heavy boat traffic" refers to areas where a great deal of boat traffic occurs and is known to occur (approximately exceeding 1 boat every 15 minutes). Gill nets are not allowed to be secured in marked navigational channels. Mike stated that Row 10 addresses safety issues for navigation. It was suggested that this statement needs to be included in operational conditions instead of the BMP list because if they opt to complete an EA, this recommendation will be ignored. Vance mentioned that marinas are built right next to bridges in several areas. Bill stated that this appeared to be comparing apples to oranges when comparing gill nets to boat traffic and that there is a safety hazard with boat traffic. Other activities to consider when determining this BMP, to remain equitable, include commercial and recreational activity, navigational dredge operations, unmarked navigational channels in some areas, and barge traffic in unmarked channels. Doug questioned if the buffer zones would meet a burden of proof if this is placed as a standard condition. It was noted that WRC and

the US Coast Guard check the waterways frequently and that hazards to navigation are Coast Guard jurisdiction. Mike stated that he would like safety to be considered first and that the 900' buffer is DMF requirements (3J0102 NC—MFC rule). A possible recommendation as a permit condition for coastal waters would include a 900' buffer to 24 hour unstaffed bridges and no restriction on staffed bridges. A log salvager could seek a variance to this recommendation.

Doug stated that it needed to be addressed on a case-by-case basis and DMF and WRC (as well as others) can make recommendations during the review stage. An EA would not be the alternative to keeping a certain distance from the bridges because it is a safety concern and not an environmental one. The words “bridges and trestles” will be taken out of **Row 10** and will be left open for review during the permitting process. The words “boat ramps” will be taken out of **Row 8** based on the same reasoning.

Row 19: This subject matter is not based on environmental concerns, but is based on private property rights. The team decided to include a statement in the guidance manual to encourage log salvagers to research the proposed working area to determine that no one has a submerged land claim on the area. This row was deleted as well.

The next meeting was scheduled for April 11th, 10am, in Morehead City. (Location TBA) The draft outline will be reviewed at the next meeting.

2:00 Public Comment

Al stated that he has concerns about the silt curtain requirement. Doug stated that this recommendation will be reviewed during the permitting process and that it was mentioned in previous meetings that log salvagers using air pillows to lift logs would not be required to use a silt curtain.

2:10 Meeting was adjourned.

April 11, 2000

Submerged Log Salvage Policy Development Meeting **Tuesday, April 11, 2000**

Attendees:

Donna Moffitt, Division of Coastal Management
Doug Huggett, Division of Coastal Management
Mike Street, Division of Marine Fisheries
Sara E. Winslow, Division of Marine Fisheries
Kent Nelson, Wildlife Resources Commission
Jim Stephenson, NC Coastal Federation
Kelly Rudd

Vance Chamberlin
Al Purdy
Steve Valentine
Kenneth Crow

10:00 The meeting was called to order. The following changes were made to the March 16th meeting minutes: Page 2, 2nd paragraph, line one, an “s” was added to the word “report” at the end of the sentence; Page 2, 4th paragraph, line 7, an amendment was made to the minutes, adding “New Bern waterfront” as an additional area that should be “flagged”; Page 3, 4th paragraph under “Row 2”, first sentence, delete “and that Florida has very strenuous regulations concerning PNAs”; Page 4, 1st paragraph, 2nd sentence, delete the extra “to” in front of “maps,”; Page 4, 3rd paragraph, line five, the sentence should read as “...stated

that *fisheries independent and dependent* data gathering...”; Page 4, 6th paragraph, under Row 15, add “Although it is eliminated as a BMP.” at the end of the paragraph; Page 5, 2nd paragraph, line 13, should read as “...Steve Benton...”; Page 5, 3rd paragraph, 1st sentence, change “areas” to “protection plans”. Minutes were approved with changes and amendment.

BMP List Review:

Row 1: Vance asked where a sediment analysis would be submitted. Doug stated that the analysis will provide data that will be compared to existing data at Division of Water Quality. Doug noted that he is hesitant to require sediment analysis with no existing standards. Mike requested that the requirement of a sediment analysis under these circumstances remain in the document so that when the EIS is completed, it will provide standards for a sediment analysis. Doug stated that he would like the sediment analysis to be better defined (i.e. toxins? heavy metals? dioxin? mercury? etc.). Donna noted that this sediment analysis requirement in this BMP encourages the log salvager to not work in these areas.

Mike asked if the results of a sediment analysis would be grounds for denial of a permit. He also noted that it is scientifically proven that sediments can move and can pose a threat to the environment. Doug asked if anyone would ever be able to say that resuspension by the log salvager will affect fisheries resources or humans. He also noted that something that is not proven cannot be used in a regulatory sense and that he would like to investigate other projects to determine if they have been denied permits because of sediment analysis. Donna stated that it is known and proven that heavy metal sinks and that this pollutant can be harmful. It is her recommendation that log salvaging should either be prohibited in this area or do a sediment analysis.

Kent reiterated that the resuspension of toxins into the water was a concern of Sandy Mort’s (DWQ-Toxins) and that an expert can look at the data and determine the effects that activity may have on the aquatic environment and humans. Mike stated that a dilemma exists because of the oversight in the regulatory system.

Doug stated that it is difficult to explain why a sediment analysis will be required if there is no existing use for it. Mike stated that at some point in time, the issue has to be faced and resolved. Donna continued to suggest that if the log salvager must work within buffer areas that they need to do a sediment analysis for heavy metals and toxicity. Doug stated that DCM does not have the expertise to determine what sediments and at what levels are dangerous to the environment. An explanation of what is required in the sediment analysis is needed. Donna mentioned that Courtney Hackney could be asked to help determine the protocol. Mike stated that the State and the EMC need to address these issues. Donna noted that the EIS may be complete before this is an issue. Changes were noted and revisions will be made to the BMP List.

Mike stated that the log salvagers need to have the anadromous fish and PNA information up front and that this information needs to be mapped on GIS layers. Donna stated that if log salvagers want to work within PNA and anadromous fish spawning areas an EA will be required. It is better to not have a blanket moratorium area so that each application is flexible as needed. Doug noted that there are no water bodies, to his knowledge, that would be completely closed due to PNAs and anadromous fish spawning.

Row #2 will be changed to add those areas that are documented at the time the application is made. Mike reiterated that if new areas are documented after a permit is issued, the documented areas will apply to new permits and possibly to those getting renewals. Vance stated that it is doubtful that a log salvager would renew a permit for log salvaging for the same spot after three years. Additional changes were made concerning the language of Row #2 in the BMP list and Doug mentioned that he would work up the language for that BMP. Vance asked how much damage will log salvaging do to PNAs and anadromous fish spawning areas. Doug stated that the effects will vary, but that these conditions are placed on several development (i.e. dredging, bridge work, etc.) permits.

Jim asked if there are management plans for Outstanding Resource Waters (ORWs) and Nutrient Sensitive Waters (NSWs). Mike stated that there are more stringent standards on other classified water bodies (i.e. PNAs, SAVs, etc.). Doug stated that there are NSW management plans for non-point source pollution, but there are no formal management plans for ORWs. Nutrient sensitive rivers include, but are not limited to,

Neuse River, White Oak River, Tar-Pamlico River, Chowan River, and the Lake Jordan watershed. ORWs exist in almost all coastal areas. The most recognized ORW is the Alligator River, which may have some concentration of logs. Jim noted the special ecological importance of these waters. It was noted that depth requirements will help protect some of these areas. It was mentioned that ORWs and NSWs are not the same and that ORWs are very different. Donna suggested that if a log salvager is requesting to work within an ORW that an EA be required and if log salvaging is proposed to occur within NSWs, the log salvager must be in compliance with the applicable management plan. Mike suggested making an “a” and “b” for Row #3 in the BMP list. “3a” would include no work in ORWs unless an EA is completed and “3b” would include that the log salvaging practices must comply with the applicable NSW plan. The ORWs and the NSWs will be mapped in GIS layer and provided in the guidance document.

Row 4: Someone asked how the log salvagers would determine where these areas exist. Doug stated that the log salvager would need a site visit with the field staff to determine the circumstances of each site. Vance noted that speed is important to a log salvager and that they need to be able to move relatively quickly. Vance asked how an SAV can be located (seen) through turbid water during the site visits. Sara stated that most likely there would be no SAVs in turbid waters. SAVs can go as far inland as the fall line and that there are some “un-wanted” SAVs. Doug stated that if a log salvager has a question about an area, the log salvager should call him at DCM. The plan for the future is that all of these areas (SAV) are included in Coastal Habitat Protection Plans.

Rows 5 & 6 were left as they now exist. It was noted that Row 6 needs to be broken out of the BMP list as an operational standard. It is acceptable to leave in the BMP list so that everyone is made aware of this information.

Row 7: It was suggested that the following addition is made to the BMP: “whichever is lesser”

Row 8: Someone asked what good will an EA do in this case. Vance suggested that it could be pointed out that the log salvager is liable for damages. Doug reminded the group that the team could not do “pseudo” rule making. The navigational and the property right concerns are legitimate and a condition can be made on the permit concerning these issues. It was suggested that the recommendation include the log salvager to remain 100 feet from active docks and piers and the property owner must provide written consent/dissent of the action. If the landowner does not want the log salvaging operation near his/her property that does not mean that the log salvager cannot work there. The landowner can appeal the log-salvaging permit if desired. This is an operational condition and should not be included in the BMP list because it is not directly based on the welfare of the environment (i.e. an EA would not be required because of this issue).

Row 10: It was suggested that this BMP be removed from the list. The resource agencies have the opportunity to comment on a case-by-case basis.

Row 11: It is acceptable as it is now written. It was noted that an EA would be useful because it will illustrate adverse impacts on pound nets.

Row 12: The team suggested adding “franchises” to the first box of this row.

Rows 13 through 15 are acceptable as they are now written.

Row 16: It was noted that if 2 permit applications are pending at the same time for the same area, whichever applicant has completed their duties of the permit process will receive the permit. DCR permits are exclusive.

It was also noted that town and local governments can express their concern with having log salvaging operations in certain areas, but a permit cannot be denied based on the town’s approval or disapproval.

A monthly report will be required from the log salvager whether work is or is not in progress. This report can be emailed to Doug Huggett at DCM. The team noted that a report form needs to be created for consistency.

Doug mentioned that he is concerned that the team may be making “pseudo” rules. He also noted that any work that requires digging and/or that falls under the Dredge and Fill Act would require an EA.

1:00 Working Lunch

The team reviewed and made changes to the proposed outline. **(Please see attached)**

It was noted that CAMA permits are transferable and that DCR permits are not transferable. It was also mentioned that a voice mail had been received from someone in the Wilmington office of the US Army Corps of Engineers (COE) discussing their interest in assuming jurisdiction concerning the log salvaging issue. Having an official contract for those choosing to abide by the BMP list was discussed. A Memorandum of Understanding is a possible avenue. Doug mentioned that a MP7 or MP8 may be the way to go since it would be less problematic.

Donna stated that either this team or a new team would need to revisit the log salvaging issue once the EIS is complete. The BMP list is to be used for the short-term solution. An additional recommendation to the list of recommendations is to suggest funding for the EIS from the Department instead of requiring each review agency/division to provide funding.

The next log salvage meeting will be held on June 21-22. The meeting will be held at Umstead Park Visitor Center off of Hwy 70. The meeting will begin at 8am on the 21st and end at 5pm. The meeting will begin at 8am on the 22nd and end (tentatively) at 12noon.

Appendix D: Invitation to Interested Parties to Attend Team Meetings and List of Recipients



NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

DIVISION OF COASTAL MANAGEMENT

November 22, 1999

To Whom It May Concern:

JAMES B. HUNT JR.
GOVERNOR

WAYNE McDEVITT
SECRETARY

DONNA D. MOFFITT
DIRECTOR

The NC Division of Coastal Management was given the charge to initiate a policy development team to look at the submerged log salvaging issue in North Carolina. A Submerged Log Salvage Policy Development Team has been formed including participation from the Department of Cultural Resources-Underwater Archaeology, Wildlife Resource Commission, the Division of Marine Fisheries, the State Property Office, the NC Attorney General's Office, the NC Coastal Federation, Division of Forest Resources, Division of Water Quality, and the Division of Coastal Management. This group of individuals will look at the issues involved in log salvaging operations and use that information to create a policy recommendation that will protect the people and the environment of the state of North Carolina the best way possible.

The first meeting was held November 2nd, which involved stating the issues of concern and determining the process that would be followed. Draft minutes are enclosed. This letter of notification is a result of the group's decision to encourage public awareness of the log salvaging issue.

If you would like to attend the next meeting of the Submerged Log Salvage Policy Development Team, it will be held December 2, 1999 in the Wilmington Regional Office, Large Conference Room. A field trip will begin at 10:00 am where the group will meet at Riverwood (directions enclosed) to tour the Riverwood Log Salvaging area. Lunch will be on your own from 12-1:30 and the group will reconvene at 1:30 at the Wilmington Regional Office. An opportunity for public comment will be at 3:15 and the meeting will adjourn at 3:30.

If you have any questions or would like more information, please contact Kelly Rudd at (919) 733-2293 ext. 251 or email her at kelly.rudd@ncmail.net. Please notify Ms. Rudd if you do not wish to receive future meeting notices. Thank you for your interest.

Sincerely,

A handwritten signature in cursive that reads "Donna D. Moffitt".
Donna D. Moffitt

1628 MAIL SERVICE CENTER, RALEIGH, NC 27609-1835
3728 CAPITAL BLVD., RALEIGH, NC 27604
PHONE 919-733-2298 FAX 919-733-1495

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER - 50% RECYCLED/10% POST-CONSUMER PAPER

Recipients

The Nature Conservancy office in Windsor

Roanoke River Partners

Bertie County Economic Development Commission

Roanoke River National Wildlife Refuge

Elizabeth City Office of the Wildlife Resources Commission

NC Division of Parks and Recreation

NC Dept. of Commerce

Known Submerged Logging Interests

Purdy

Bordeaux

McEntire

Cline

Lost & Found Lumber Co.

Riverwood Corps.

Superior Waterlogged Lumber

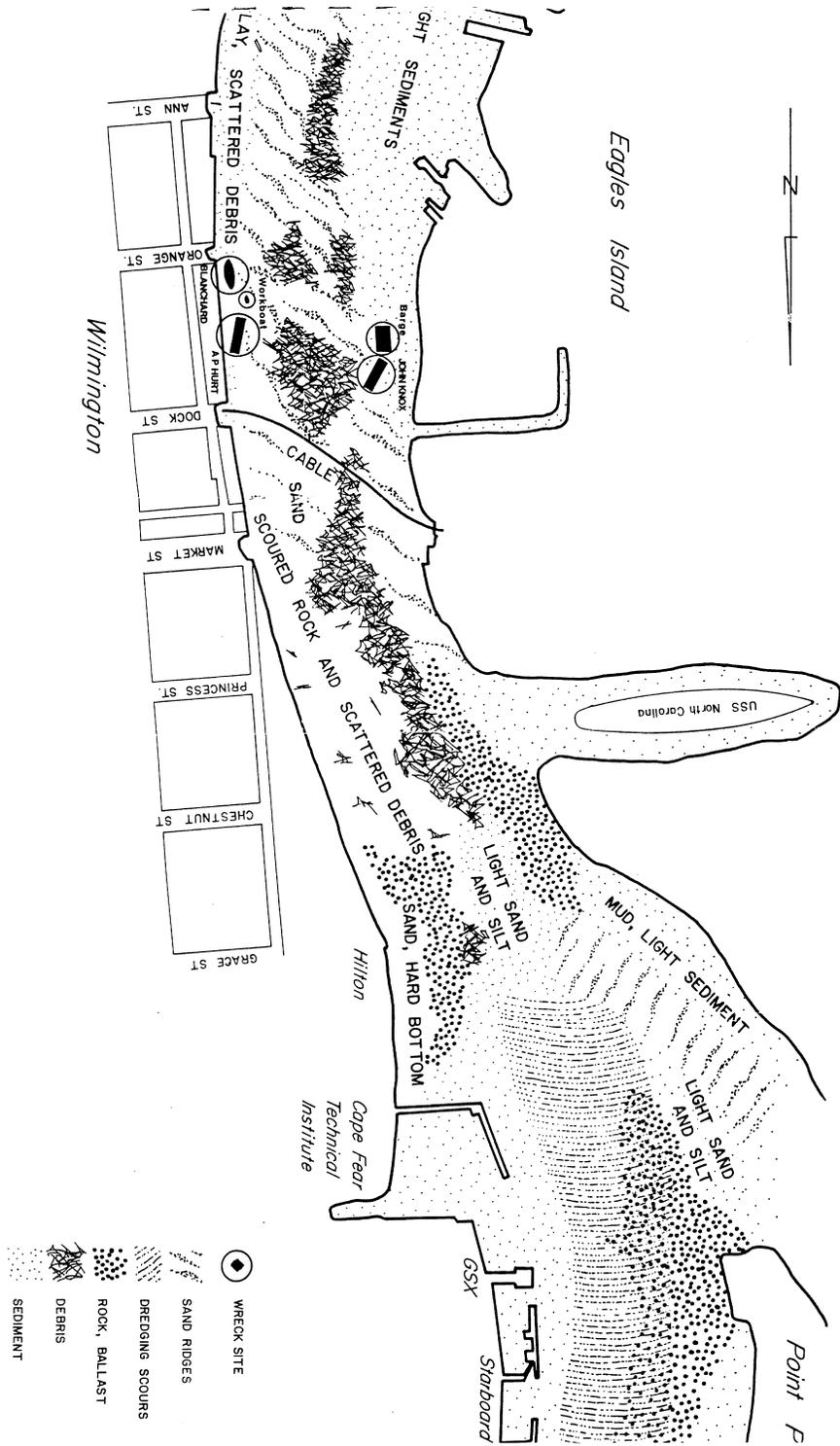
Environmental Defense

US Army Corps of Engineers

National Marine Fisheries Service

Selected Local Governments Near Known or Potential Submerged Logging
Projects

APPENDIX E: Sample Representations of Submerged Logs: Drawings from Side-Scan Sonar and from Diver Observations



APPENDIX F: Current Cape Fear Riverwood Corp DCR and CAMA Permits



STATE OF NORTH CAROLINA
Department of Cultural Resources

Permit Number
00NER591 (Renewal)

PERMIT

for

- Exploration
- Recovery
- Salvage

RECEIVED

JUN 28 2000

COASTAL MANAGEMENT

Issued to: Cape Fear Riverwood Corporation
d.b.a. Riverwood
118 Old Dairy Road
Wilmington, NC 28405

authorizing activities affecting submerged cultural resources in New Hanover, Pender, and Brunswick Counties at Northeast Cape Fear River as requested in the Permittee's application dated February 19, 2000. This permit, issued on March 1, 2000, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may cause the permit to be null and void.

SEE SPECIAL CONDITIONS A THROUGH H

Any project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on March 1, 2001.

Signed by the authority of the Secretary of the Department of Cultural Resources

Stephen R. Claggett
State Archaeologist, Office of State Archaeology, State and Historic Preservation Office.

This permit and its conditions are hereby accepted

[Signature]
Signature of Permittee

SPECIAL CONDITIONS FOR PERMIT NUMBER 00NER591 (Renewal)

- A. Prior to commencing any recovery operations, the Permittee shall be responsible for obtaining all required permits and authorization from other state and federal regulatory agencies, and, if necessary, adjacent landowners.
- B. This permit is limited to the recovery of submerged logs and other non-structural wood from the Northeast Cape Fear River. The presence of any other cultural material that is encountered during the course of the project shall be immediately reported to the Underwater Archaeology Unit.
- C. The Department and the Permittee recognize that this is an experimental project to determine the technical and economic feasibility of recovering submerged wood for its commercial use and the effects of this activity on the environment. The period of this permit shall be one year. The permit may be renewed, subject to any changes in the permit terms the Department deems appropriate, providing the Permittee has satisfactorily met all the terms and conditions of this permit. Should the project prove successful, the Department reserves the right to require a reasonable permit fee for future renewal of this permit.
- D. Consistent with the conditions of this permit, the Permittee is authorized to recover submerged logs from no more than four specific areas at any one time. Each area shall encompass no more than a one-mile reach of the river as measured along the shoreline. The Permittee may apply for adjacent one-mile sections of the river. Prior to commencing recovery activities, the Permittee shall submit to the Department a 1:24,000 scale map clearly delineating the boundaries of the recovery area(s) and a written statement detailing the recovery methods and equipment to be used. Upon receipt of the map(s) and description of methodology, the Department shall have up to 30 days to review that documentation. This review period may be extended an additional 30 days if it is necessary for the Department to consult with other regulatory agencies and receive their comments on the proposed recovery activities.
- E. If the Department determines that the recovery of submerged logs from a specific area will not jeopardize significant cultural resources, or adversely impact the environment, the Permittee shall be given exclusive rights to recover logs from that area. If the Department feels that recovery operations in a specific area may jeopardize significant cultural resources, or adversely impact the environment, the Permittee shall not undertake recovery operations in that area.
- F. The Permittee agrees to notify the office of the Underwater Archaeology Unit (UAU), P.O. Box 58, Kure Beach, North Carolina 28449, phone 910-458-9042, at least 48 hours prior to initiating field activities.
- G. The Permittee shall submit a monthly report detailing project activities and listing all artifacts recovered and their status including an inventory of all logs recovered with length, diameter, and wood-type given for each log. Monthly reports are due by the 10th day of the following month. The report should also include a projected schedule of operations for the coming month.
- H. All logs and timbers recovered under the conditions of this permit shall become property of the Permittee. Any other artifacts that may be discovered incidental to recovery of logs remain state property, and must be turned over to the UAU.

Permit Class

NEW

Permit Number

111-97

STATE OF NORTH CAROLINA
Department of Environment, Health & Natural Resources
and
Coastal Resources Commission

Permit

for
Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to Riverwood Company, 2128 Burnett Boulevard, Wilmington, NC 28401

authorizing development in New Hanover, Pender County at Northeast Cape Fear River, 3 sites

, as requested in the permittee's application dated 11/13/96 including attached site maps,

2, dated 5/6/97.

This permit, issued on 8-27-97, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

- 1) Log salvage operation may only be carried out 2640' upstream and 2640' downstream, bank to bank, from the three (3) site symbols depicted on the attached topographic map sections. Salvage from any additional area(s) requires a modification of this permit.
- 2) The permittee will notify the DCM District Manager in Wilmington (910/395-3900) two (2) weeks prior to initiating salvage operations at any site.
- 3) All salvage activity must be carried out in strict compliance with N.C. Dept. of Cultural Resources Permit No. 97 NER 591 (Renewal) which expires March 1, 1998. The permittee will provide the Division of Coastal Management a copy of any report required under the Cultural Resources permit.

(Attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on

December 31, 2000

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DEHNR and the Chairman of the Coastal Resources Commission.



Roger N. Schecter, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

Riverwood Company

Permit #111-97
Page 2 of 2

ADDITIONAL CONDITIONS

- 4) If it becomes necessary to remove, dredge, or excavate any bottom sediment in order to remove any log, a modification of this permit must be requested. This permit authorizes only the removal of logs by grappling or pulling logs directly from the bottom without a significant disturbance of the bottom.
- 5) No logs, timbers, trees or other debris shall be removed, repositioned, or stored so as to create a navigational safety hazard. Logs, etc. not intended to be taken to a shore support site will be repositioned as close to the original position as possible.
- 6) Development of shore-based support facilities may require a modification of this permit, or other state permits or authorizations. The permittee will notify the Division of any such plans.
- 7) Should the Department elect to test waters during log removal and should such testing indicate toxicity and/or turbidity levels elevated above state standards, the Department may require the operation immediately to cease or to move to another area authorized under this permit for log removal.
- 8) This permit does not authorize the removal or salvage of any object or material other than submerged logs.

APPENDIX G: Current Lost and Found Lumber Company DCR and CAMA Permits



Permit Number
99PRR604

STATE OF NORTH CAROLINA
Department of Cultural Resources

PERMIT

for

Exploration

Recovery

Salvage

Issued to: Robert P. and Jonathan R White
107 Cypress Avenue
Hertford, NC 27944

authorizing activities affecting submerged cultural resources in Perquimans County at Perquimans River, vicinity of Hertford as requested in the Permittee's application dated July 1, 1999. This permit, issued on July 28, 1999, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may cause the permit to be null and void.

SEE SPECIAL CONDITIONS A through G

Any project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on July 28, 2000.

Signed by the authority of the Secretary of the Department of Cultural Resources

Handwritten signature of Stephen R. Claggett.
State Archaeologist, Office of State Archaeology, State and Historic Preservation Office.

This permit and its conditions are hereby accepted.

Handwritten signature of Robert Paul White.
Handwritten signature of Jonathan R. White.
Signature of Permittee

SPECIAL CONDITIONS FOR PERMIT NUMBER 99PRR604

- A. Prior to commencing any recovery operations, the Permittee shall be responsible for obtaining all required permits and authorization from other state and federal regulatory agencies, and, if necessary, adjacent landowners.
- B. This permit is limited to the recovery of submerged logs and other non-structural wood from the Perquimans River. The presence of any other cultural material that is encountered during the course of the project shall be immediately reported to the Underwater Archaeology Unit.
- C. The Department and the Permittee recognize that this is an experimental project to determine the technical and economic feasibility of recovering submerged wood for its commercial use and the effects of this activity on the environment. The period of this permit shall be one year. The permit may be renewed, subject to any changes in the permit terms the Department deems appropriate, providing the Permittee has satisfactorily met all the terms and conditions of this permit. Should the project prove successful, the Department reserves the right to require a reasonable permit fee for future renewal of this permit.
- D. The Permittee is authorized to recover submerged logs only from the four areas specified in the permit application.
- E. The Permittee agrees to notify the office of the Underwater Archaeology Unit (UAU), P.O. Box 58, Kure Beach, North Carolina 28449, phone 910-458-9042, at least 48 hours prior to beginning field activities.
- F. The Permittee shall submit a monthly report detailing project activities and listing all artifacts recovered and their status including an inventory of all logs recovered with length, diameter, and wood-type given for each log. Monthly reports are due by the 10th day of the following month. The report should also include a projected schedule of operations for the coming month.
- G. All logs and timbers recovered under the conditions of this permit shall become property of the Permittee. Any other artifacts that may be discovered incidental to recovery of logs remain state property, and must be turned over to the UAU.

Permit Class
NEW

Permit Number
45-99

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

RECEIVED

JUL 09 1999

COASTAL MANAGEMENT

Permit

- for
- Major Development in an Area of Environmental Concern pursuant to NCGS 113A-118
- Excavation and/or filling pursuant to NCGS 113-229

Issued to **Robert P. and Jonathan R. White, Route 6, Box 218, Hertford, NC 27944**

authorizing development in Perquimans County at Perquimans River, various sites, vicinity of Town of Hertford, as requested in the permittee's application dated 4/6/99 including attached sites maps (2), recovery diagram (1), and bottom contour profiles, A-1 through D-1.

This permit, issued on 6-18-99, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

Log Recovery

- 1) Log salvage operations may only be carried out 2,640 feet upstream and 2,640 feet downstream from the four sites depicted on the attached site location maps. Salvage from any additional area will require a modification to this permit.
- 2) All log salvage work shall be conducted in water depths equal to or greater than 7 feet below the normal water level.
- 3) Only logs that are fully buried by bottom sediments may be removed.

(See attached sheets for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

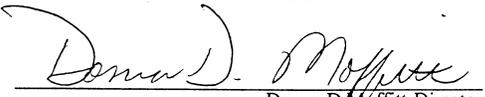
This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on
December 31, 2002

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.


Donna D. Moffitt, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

 
Signature of Permittee

ADDITIONAL CONDITIONS

- 4) In order to minimize impacts to juvenile finfish populations, no salvage work at sites 1, 2, and 3 (as depicted on the attached location maps) will be permitted between February 15 and October 31 of any year without the prior approval of the Division of Coastal Management, in consultation with the Division of Marine Fisheries and the NC Wildlife Resources Commission.
- 5) All log salvage work shall be carried out greater than 100 feet from the shoreline.
- 6) No log salvage work shall occur within any area(s) vegetated with submerged aquatic vegetation.
- 7) In order to confine suspended sediments to the immediate work area, a turbidity curtain must be utilized which fully encircles the work vessels and the area of active log removal. The turbidity curtain shall remain in place until turbidity levels within the enclosed area no longer exceed those of the surrounding, undisturbed waters. Other best management practices (BMP's) may be utilized in lieu of a turbidity curtain provided the BMP's receive prior approval of the Division of Coastal Management, in consultation with the Division of Water Quality.
- 8) The permittee shall notify a representative of the Division's Elizabeth City office at (252) 264-3901 at least two (2) weeks prior to the initiation of log salvage activities at any site.
- 9) Prior to the commencement of any log recovery operations, the permittee shall apply for and receive an underwater archaeology permit from the N.C. Department of Cultural Resources as stipulated in N.C.G.S. 121 Article 3.
- 10) This permit only authorizes the removal of logs by the methods and equipment specifically identified in the Environmental Assessment (EA) for the proposed project (Project No. 925). Removal by any other means will require a modification to this permit prior to the initiation of such activities.
- 11) No logs, timbers, trees or other debris shall be removed, repositioned, or stored so as to create a navigational safety hazard. Materials not intended to be taken to a shore support site shall be repositioned (unburied) as close to their original position as possible.
- 12) No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.
- 13) Should the Department elect to test adjacent waters during log removal, and should such testing indicate that toxicity and/or turbidity levels are elevated above State standards, the Department may require operation to immediately cease, or move to another area authorized under this permit.

ADDITIONAL CONDITIONS

- 14) This permit does not authorize the removal or salvage of any object or material other than submerged logs.
- 15) Prior to the expiration date of this permit, the permittee shall provide the Division with a comprehensive progress report on the number, sizes, and general location(s) of the removed logs. This information will be utilized in making future modification and/or renewal requests on this permit.
- 16) Prior to the initiation of any salvage activities authorized under this permit, the permittee must contact the Department of Administration's State Property Office to determine if an Easement will be required for the authorized activities. If required, the permittee shall apply for and receive this easement before beginning salvage operations.

NOTE: The permittee is advised that any development of shore-based support facilities may require a modification of this permit, as well as other state permits or authorizations.

Permit Class

MODIFICATION/MINOR

Permit Number

45-99

STATE OF NORTH CAROLINA

Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

RECEIVED

AUG 01 2000

COASTAL MANAGEMENT

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to Robert P. and Jonathan R. White, Route 6, Box 218, Hertford, NC 27944

authorizing development in Perquimans County at Perquimans River, various sites, vicinity of Town
of Hertford, as requested in the permittee's application dated _____

This permit, issued on 7/20/00, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

- This minor modification authorizes a revision to Condition No. 7 of the original permit. Condition No. 7 now reads as follows:
- 7) In order to confine suspended sediments to the immediate work area, a turbidity curtain must be utilized at sites 1, 2 and 3 which fully encircles the work vessels and the area of active log removal. The turbidity curtain shall remain in place until turbidity levels within the enclosed area no longer exceed those of the surrounding, undisturbed waters. Other best management practices (BMP's) may be utilized in lieu of a turbidity curtain provided the BMP's receive prior approval of the Division of Coastal Management, in consultation with the Division of Water Quality.

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

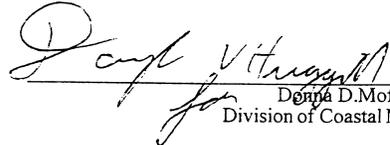
This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on
December 31, 2002

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.


Danya D. Moffitt, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.



Signature of Permittee

ADDITIONAL CONDITIONS

NOTE: A decision on whether or not to remove the turbidity curtain condition and sites 1, 2, and 3 may only be made following a site visit to these areas during the authorized work period. The permittee is encouraged to coordinate an agency visit to these sites following the expiration of the February 15 through October 15 moratorium period specified in Condition No. 4 of the original permit.

- This minor modification must be attached to the original of Permit No. 45-99, and both documents must be readily available on site when a Division representative inspects the project for compliance. All conditions and stipulations of the active permit remain in force under this modification unless altered herein.

APPENDIX H: Current Al Purdy DCR Permit

Permit Number
00ROR607



STATE OF NORTH CAROLINA
Department of Cultural Resources

PERMIT

for

Exploration

Recovery

Salvage

Issued to: Alfred L. Purdy and Gregory S. Purdy
P.O. Box 30
Harkers Island, NC 28531
Phone (252) 728-7730

Authorizing activities affecting submerged cultural resources in Martin County at Devils Gut as requested in the Permittee's application dated February 5, 1999. This permit, issued on February 15, 2000, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may cause the permit to be null and void.

SEE SPECIAL CONDITIONS A through J

Any project modifications not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on February 15, 2001.

Signed by the authority of the Secretary of the Department of Cultural Resources

Stephen R. Claggett
State Archeologist, Office of State Archaeology, State Historic Preservation Office.

This permit and its conditions are hereby accepted.

Al Purdy
Alfred L. Purdy

SPECIAL CONDITIONS FOR PERMIT NUMBER 00ROR607

- A. Prior to commencing any recovery operations, the Permittee shall be responsible for obtaining all required permits and authorization from other state and federal regulatory agencies, and, if necessary, adjacent landowners.
- B. This permit is limited to the recovery of submerged logs and other non-structural wood from Devils Gut, a tributary of the Roanoke River in Martin County, as shown on the map attached to the original application. The presence of any other cultural material that is encountered during the course of the project shall be immediately reported to the Underwater Archaeology Unit.
- C. The Department and the Permittee recognize that this is an experimental project to determine the technical and economic feasibility of recovering submerged wood for its commercial use and the effects of this activity on the environment. The period of this permit shall be one year. The permit may be renewed, subject to any changes in the permit terms the Department deems appropriate, providing the Permittee has satisfactorily met all the terms and conditions of this permit. Should the project prove successful, the Department reserves the right to require a reasonable permit fee for future renewal of this permit.
- D. Consistent with the conditions of this permit, the Permittee is authorized to recover submerged logs from no more than four specific areas at any one time. Each area shall encompass no more than a one-mile reach of the river as measured along the shoreline. The Permittee may apply for adjacent one-mile sections of the river. Prior to commencing recovery activities, the Permittee shall submit to the Department a 1:24,000 scale map clearly delineating the boundaries of the recovery area(s) and a written statement detailing the recovery methods and equipment to be used. Upon receipt of the map(s) and description of methodology, the Department shall have up to 30 days to review that documentation. This review period may be extended an additional 30 days if it is necessary for the Department to consult with other regulatory agencies and receive their comments on the proposed recovery activities. The four initial areas identified by the permittee are defined as those sections of river within one-half mile (upstream and downstream) of the following points:
- | | |
|-------------------------|---------------|
| Area 1 - 35° 51' 18" N, | 76° 57' 26" W |
| Area 2 - 35° 50' 37" N, | 76° 56' 58" W |
| Area 3 - 35° 50' 20" N, | 76° 55' 37" W |
| Area 4 - 35° 50' 14" N, | 76° 54' 44" W |
- E. If the Department determines that the recovery of submerged logs from a specific area will not jeopardize significant cultural resources, or adversely impact the environment, the Permittee shall be given exclusive rights to recover logs from that area. If the Department feels that recovery operations in a specific area may jeopardize significant cultural resources, or adversely impact the environment, the Permittee shall not undertake recovery operations in that area.
- F. In order to minimize impacts to juvenile finfish populations, no salvage work at areas 1,2,3, and 4 will be permitted between February 15 and October 31 of any year without the prior approval of the Department of Cultural Resources, in consultation with the Division of Marine Fisheries and the NC Wildlife Resources Commission.
- G. No log salvage work shall occur within any area(s) vegetated with submerged aquatic vegetation.
- H. The Permittee agrees to notify the office of the Underwater Archaeology Unit (UAU), P.O. Box 58, Kure Beach, North Carolina 28449, phone 910-458-9042, at least 48 hours prior to initiating field activities.

SPECIAL CONDITIONS FOR PERMIT NUMBER 00ROR607 (continued)

- I. The Permittee shall submit a monthly report detailing project activities and listing all artifacts recovered and their status including an inventory of all logs recovered with length, diameter, and wood-type given for each log. Monthly reports are due by the 10th day of the following month. The report should also include a projected schedule of operations for the coming month.
- J. All logs and timbers recovered under the conditions of this permit shall become property of the Permittee. Any other artifacts that may be discovered incidental to recovery of logs remain state property, and must be turned over to the UAU.

APPENDIX I: Historical McEntire DCR Permit



Permit Number
93CEB577 (Renewal)

STATE OF NORTH CAROLINA
Department of Cultural Resources

PERMIT

for

- Exploration
- Recovery
- Salvage

RECEIVED
JUN 28 2000
COASTAL MANAGEMENT

Issued to Cary P. McEntire, 305 South 3rd Street, Wilmington, NC 28401

authorizing activities affecting submerged cultural resource in New Hanover

County at Cape Fear/Northeast Cape Fear Rivers

as requested in the permittee's application dated May 27, 1993

This permit, issued on June 23, 1993, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may cause the permit to be null and void.

SEE ATTACHED SPECIAL CONDITIONS A THROUGH F

This permit action may be appealed by the Permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

Any project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on December 23, 1993

Signed by the authority of the Secretary of the Department of Cultural Resources

Stephen R. Augsath
Chief Archaeologist, Archaeology and Historic Preservation Section, Division of Archives and History.

This permit and its conditions are hereby accepted.

P. Cary McEntire
Signature of Permittee

SPECIAL CONDITIONS FOR PERMIT NUMBER 93CFR577 (Renewal)

- A.** This permit is limited to the recovery of submerged logs and other non-structural wood. The presence of any cultural material that is encountered during the course of the project shall be reported to the Underwater Archaeology Unit immediately.
- B.** The Department and the Permittee recognize that this is an experimental project designed to determine the technical and economic feasibility of recovering submerged wood for its commercial use. The period of this initial permit shall be one year. The permit may be renewed, subject to any changes in the permit terms the Department deems appropriate, providing the Permittee has satisfactorily met all the terms and conditions of this permit. Should the initial project prove to be financially successful, the Department reserves the right to require a reasonable permit fee for future renewal of this permit. In addition, should the Permittee wish to expand operations into other areas of the State, a submerged cultural resource survey may be required prior to recovery activities to insure that significant archaeological sites are not disturbed during the project.
- C.** This permit authorizes the Permittee the right to conduct recovery activities within the area defined as: those portions of the Cape Fear and Northeast Cape Fear Rivers bounded by the Cape Fear Memorial Bridge (Highway 17), the Isobel Stellings Holmes Bridge (Northeast Cape Fear River, Highway 117 Bridge), and the Cape Fear River Bridge (Highway 421), as designated on the attached map. In order to avoid impact on significant shipwreck sites, no recovery activity shall take place within 150 feet of the shoreline.
- D.** The Permittee agrees to notify the office of the Underwater Archaeology Unit, P.O. Box 58, Kure Beach, North Carolina 28449, phone 919-458-9042, at least 48 hours prior to initiating field activities.
- E.** The Permittee shall submit a monthly report detailing project activities and listing all artifacts recovered and their status. Monthly reports are due by the 10th day of the following month.
- F.** All logs and timbers recovered under the conditions of this permit shall become property of the Permittee.

**APPENDIX J: Memo Prepared by David Heeter Regarding
Potential Legal Issues**



State of North Carolina

Department of Justice

P. O. Box 629
RALEIGH
27602-0629

Reply to:

David Heeter
Environmental Division
Telephone: (919) 733-7247
FAX: (919) 733-0791

MICHAEL F. EASLEY
ATTORNEY GENERAL

MEMORANDUM

SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

TO: Roger
Preston Pate, DCM, Morehead City
Bob Stroud, DCM, Wilmington
John Parker, DCM, Raleigh
Wanda King, DOA, Raleigh
Andy Giles, DOJ, Raleigh
Steve Claggett, DA&H, Raleigh
Rene Gledhill-Early, DA&H, Raleigh
Charles Murray, DOJ, Raleigh
Richard Lawrence, DA&H, Kure Beach
Mike Street, DMF, Morehead City
Ski Wojciechowski, DMF, Morehead City
Richard Whisnant, DEHNR, Raleigh
Bill Flourmoy, DEHNR, Raleigh

FROM: David Heeter

DATE: January 30, 1997

RE: Summary of Meetings on Salvaging of Submerged Logs

I. BACKGROUND

The purpose of this Memorandum is to summarize the results of the meetings on January 27 and 29, 1997, regarding the recent proposals to salvage submerged logs from the State's coastal rivers. One salvaging project is already in the exploratory stage pursuant to a permit issued by the Department of Cultural Resources. Three others projects have recently been proposed.

These projects involve the salvaging of logs which sank during the Eighteenth and Nineteenth Centuries while being rafted down the Cape Fear River and its tributaries to sawmills. The logs were cut when the forest was in its climax stage. Thus, many of the logs are very large



Name David Heeter
Date January 30, 1997
Page 2

and of high quality. They include species of trees which are now rare. After being removed from the river bottom, the logs will be dried and sawed into lumber. The lumber is potentially quite valuable and will be marketed for restoring historic buildings, laying flooring, and making furniture. Mr. Chamberlin estimates that the NE Cape Fear River system contains 3,000,000 board feet of timber and that six coastal rivers with a history of extensive logging may contain 18,000,000 board feet.

The salvaging of submerged logs on such a scale is unprecedented in North Carolina. Very little is known about the potential environmental impacts from the salvaging and processing of these logs. Also in question is whether the State owns the logs and is entitled to compensation for them. A number of State agencies have concerns about these salvaging projects which need to be resolved in a coordinated manner. A fairly quick resolution of these concerns may be required since one of the projects is already ongoing.

II. STATUS OF PROJECTS

Vance Chamberlin's salvaging project is in the exploratory stage. In early 1996, he applied to the Division of Cultural Resources (DCR) for a permit to explore and salvage logs from the NE Cape Fear River in New Hanover, Pender, and Duplin Counties. Mr. Chamberlain and his partner Frank Taylor refer to this as the Riverwood Project. On March 1, 1996, the DCR issued Permit No. 96 NER 591 to Mr. Chamberlin subject to certain special conditions. The permit was issued under G.S. 121-22 & 25 which authorize permits to explore, recover, or salvage underwater archeological artifacts which have remained unclaimed for more than ten years on the bottom of any navigable waters of the State.

Permit No. 96 NER 591 limited Mr. Chamberlin's activities to the recovery of submerged logs and other non-structural wood. He was authorized to conduct a remote sensing survey in the NE Cape Fear River from the Hilton Railroad Bridge upstream to the head of navigation. Upon completing the survey, he was required to inform the Underwater Archeology Unit (UAU) of any areas of the river bottom containing a sufficient concentration of logs to justify a recovery operation. Upon UAU's determination that recovery of the logs would not jeopardize significant cultural resources, he was to be given exclusive recovery rights to no more than six recovery areas at any one time. All logs and timber which he recovered would become his property. The Permit expires on March 1, 1997, and is subject to renewal on an annual basis.

In the fall of 1996, the Division of Coastal Management (DCM) became aware of Mr. Chamberlin's activities under the DCR Permit. The Attorney General's Office subsequently sent a letter to Mr. Chamberlin informing him that the DCR Permit did not necessarily satisfy the permit requirements of any other State agency having jurisdiction over the salvaging operation. He was urged to contact several State agencies to determine whether permits were needed from them and whether an environmental assessment would be required. Mr. Chamberlin applied for a

Name David Heeter
Date January 30, 1997
Page 3

permit under the Coastal Area Management Act (CAMA) which the Division of Coastal Management (DCM) did not accept as complete for processing until January 21, 1997.

In a letter dated January 9, 1997, Mr. Chamberlin advised the DCR of his intent to resume recovery operations sometime during the week of January 13, 1997, in the Castle Hayne area near the Highway 117 bridge. He also informed DCR of his intent to request a renewal of Permit No. 96 NER 59 and to expand the six designated recovery areas to include the Neuse, Trent, White Oak, and Pamlico River systems. In a recent telephone conversation, Mr. Chamberlin confirmed that he is presently trying to salvage logs in the vicinity of the Highway 117 bridge whenever the water and weather conditions allow it.

Finally, three other persons have applied to DCR for permits to salvage submerged logs in the Cape Fear River system. They are Cary McEntire, Clay Cline, and Donald Bordeaux. Two of these areas overlap ones where Mr. Chamberlin has obtained or is seeking authorization to salvage logs. DCR has put Mr. Chamberlin's renewal request and the three recent applications on hold pending resolution of the issues raised by these projects.

III. ISSUES DISCUSSED AT MEETINGS

The following issues were discussed at the January 27 and 29 meetings:

A. Which agency should be the lead review agency within the coastal and non-coastal counties?

The lead review agency is the one responsible for circulating a permit application to other interested State and Federal agencies to inform them of a project and to solicit their comments. Because it already has a multi-agency review process in place, it makes sense for the DCM to be the lead review agency within the 20 coastal counties with regards to submerged log salvaging projects which require a CAMA permit. G.S. 113A-100, *et seq.* These are Currituck, Camden, Pasquotank, Perquimans, Chowan, Gates, Hertford, Bertie, Washington, Tyrrell, Dare, Hyde, Beaufort, Craven, Pamlico, Carteret, Onslow, Pender, New Hanover, and Brunswick Counties. The DCM should also serve as the lead review agency with regards to submerged log salvaging projects which require a permit under the State Dredge and Fill Law (D&FL). G.S. 113-229. A D&FL permit is required before undertaking excavating and filling projects within the 20 coastal counties under the CAMA plus Northampton, Halifax, Martin, Bladen, and Columbus Counties. In addition, the D&FL applies to State owned lakes.

When DCM acts as the lead review agency, this will not relieve the salvager from obtaining a permit from DCR to explore, recover, or salvage underwater artifacts under G.S. 121-25. DCM and DCR should coordinate their permit review processes to the extent possible to eliminate excessive duplication, delay, etc.

If a project to salvage submerged logs is proposed in a county where the DCM does not have jurisdiction under either the CAMA and/or the D&FL, the DCR should act as the lead agency pursuant to its jurisdiction under G.S. 121-25. In such instances, the DCR should initiate an interagency review process so that all interested agencies have the opportunity to comment on the proposed project.

B. What other agencies should be involved in the review process?

The State agencies which are normally involved in the review of CAMA major development projects should be involved in the review of any applications for permits to salvage submerged logs. They are the Divisions of Coastal Management, Community Assistance, Environmental Management, Archives and History, Environmental Health, Highways, Water Resources, and Marine Fisheries, the Land Quality Section, the State Property Office, and the Wildlife Resources Commission. The Corps of Engineers, Department of Army, is also involved in the review of major development projects and coordinates its response with those of the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Environmental Protection Agency. These Federal agencies should be involved in reviewing any permit applications.

The Corps of Engineers has already indicated that it has initiated a joint review of Vance Chamberlin's CAMA permit application.

C. Is an environmental impact statement required under State law because such salvaging projects involve the use of public lands significantly affecting the quality of the environment?

As amended in 1992, the State Environmental Policy Act (SEPA) now requires that every State agency shall include an environmental impact statement "in every recommendation or report on any action involving ... use of public land for projects ... significantly affecting the quality of the environment of this State" G.S. 113A-4(2). A detailed statement is required setting forth the environmental impacts of the proposed action, including certain items specifically set forth in the SEPA.

The State of North Carolina is the owner of the lands beneath any waters which are potentially navigable by pleasure or commercial watercraft even if no watercraft has ever actually navigated them. Gwathmey v. State of North Carolina, 342 N.C. 287 (1995). The coastal rivers where log salvaging projects are now being proposed are certainly navigable under the Gwathmey test, and thus the logs are located on public land. The State may have recognized private submerged lands claims to parts of the bottoms of such rivers, but these areas cannot be identified until the salvagers are more specific about where they plan to conduct their operations.

Name David Heeter
Date January 30, 1997
Page 5

In any event, since the proposed salvaging projects involve the use of public lands and possibly have a potential for significantly affecting the quality of the coastal estuarine environment, there was a consensus that an environmental assessment is required under the SEPA. There was no in-depth discussion of the agency which should prepare the statement or the process of preparing one. These questions need to be explored further.

D. Does the State own or otherwise have a property interest in the submerged logs to be salvaged?

The Attorney General's Office has not issued an opinion on the State's ownership or property interest in the submerged logs. Andy Giles with the Property Control Section is of the opinion that the logs in question fall within the definition of State owned artifacts as defined in G.S. 121-22. This is because they became personal property once they were severed from the realty and floated downstream, and they have lain unclaimed on the bottom of the State's navigable waters for more than ten years. Charles Murray with the Administrative Division advises the DCR and is comfortable with this conclusion.

Three old criminal statutes dealing with fraudulent use of timber trademarks, larceny of branded timber, altering timber trademarks, and possession of branded logs without consent may provide some basis for private claims of ownership of any branded logs. G.S. 80-20, 21, 22, & 23. I'm trying to do some research into the practice of registering timber trademarks and branding logs and the effect this might have on the ownership question. However, I tend to agree that under G.S. 121-22 any private claim to any marked or branded timber is relinquished after the logs remain unclaimed on the bottom of a navigable river for more than ten years.

5. Is the State due any compensation from the salvagers of submerged logs?

Although this was not listed as an issue for discussion, it quickly became one. G.S. 121-25 appears to answer it. DCR may grant permits to explore, recover, or salvage artifacts for such a period of time and under such conditions as it deems "to be in the best interest of the State." As a condition, the DCR may require the salvager to pay a fee, relinquish custody of all or a portion of the artifacts to the State, or allow the State to sell or trade all or a portion of the artifacts. While the DCR has the authority to require compensation for any logs which are salvaged, the DCM has no such authority under the CAMA or D&FL.

Several foresters I have talked to about the proposed salvaging projects have suggested that a fair amount of compensation to the State can be arrived at by using methods which are normally applied to standing timber. One method would be to determine the value of the submerged logs by subtracting the cost of salvaging and processing them from the value of the resulting lumber. Another method would be to award the right to salvage the logs within a certain area of a river to the highest bidder subject to some minimum bid.

6. May permits be issued granting exclusive salvage rights to logs in a certain area?

This is another issue which was raised during the two meetings. Normally the permits issued by the DCR authorize exploring, recovering, or salvaging readily identifiable artifacts within a given area, such as a shipwreck. For obvious reasons, it makes sense to limit the number of salvagers at any one site by awarding exclusive rights to undertake such activities. The permit which Mr. Chamberlin received from DOC awards him exclusive recovery rights to no more than six areas if DOC determines this "will not jeopardize significant cultural resources."

However, here the salvaging of logs is being proposed over broad areas of several rivers, and several persons questioned whether exclusive salvage rights should be granted under the circumstances. This is an issue which the DCR should resolve since the DCM probably does not have the right to award exclusive rights under CAMA and D&FL permits.

7. What are the next steps which need to be taken?

Obviously further information needs to be obtained about Mr. Chamberlin's projects and the others before the State agencies can make informed judgments about them and an environmental impact study can be prepared. Some of this information needs to be obtained from the applicants themselves since all of them are somewhat vague about the areas where they are proposing their projects and the methods they will use. We also have very little information about how they will transport and process the salvaged logs which may be of importance.

In addition, I have obtained information indicating that Florida, Georgia, Alabama, Mississippi, and Louisiana have had some experience with submerged logging projects. Some of the Great Lakes and New England states have also dealt with them. I will initially focus my efforts on contacting other states in the South and Southeast since the conditions in their river systems are more likely to be comparable with the ones in North Carolina. ~

Finally, Mr. Chamberlin has invited me and representatives of the interested State agencies to visit the limited salvaging operation he is now undertaking near the Highway 117 bridge. I would suggest that we take advantage of his invitation since a site visit may help us better understand what he is proposing and make some initial judgments about the project.

8. Should Mr. Chamberlin be allowed to continue his project until all the necessary permits have been obtained and an environmental impact statement has been prepared?

This issue was not fully resolved at the meetings but will become significant when Mr. Chamberlin's DCR permit expires on March 1, 1997. In addition, his CAMA permit has not yet been processed but he is undertaking activities which may be development under the CAMA.

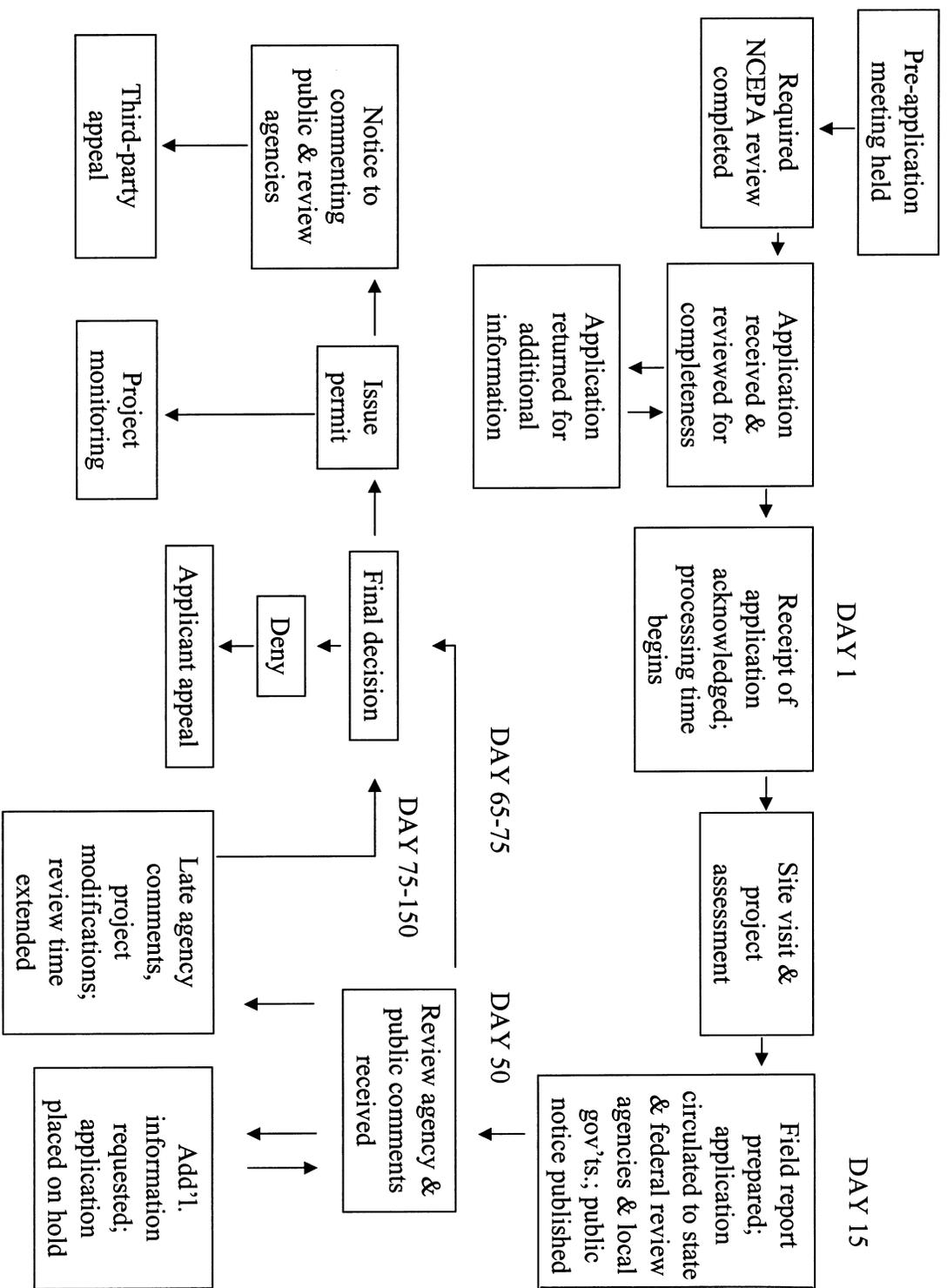
Name David Heeter
Date January 30, 1997
Page 7

The dilemma is that it may not be possible to determine the adverse impacts if any from his project without allowing him to continue it.

Therefore, I suggest considering whether Mr. Chamberlin should be allowed to continue his project on an exploratory or experimental basis under some very stringent conditions, including some self-monitoring requirements, as well as periodic inspections by the interested agencies. The other three applicants might also be allowed to proceed under the same scenario. This would make these projects legal while helping to provide the information necessary to determine whether such projects are ones the State wants to allow and if so under what conditions. It may well be that certain types of salvaging operations in certain areas of the State's rivers during certain times of the year are acceptable while others are not. Of course, this is speculative, and we may not know the answers to such questions for some time. In any event, if any projects are allowed on an experimental basis, the DCR, DCM, and other interested State and Federal agencies need to thoroughly discuss this approach before proceeding and carefully coordinate their dealings with the salvagers, etc.

cc: Allen Jernigan
Brian Cheshire

APPENDIX K: Division of Coastal Management Permit Regime



APPENDIX L: Department of Cultural Resources Permit Regime

All parties interested in the recovery or salvage of abandoned shipwrecks and other underwater archaeological artifacts from North Carolina waters must receive a permit for such activities from the Department of Cultural Resources. The Underwater Archaeology Unit (UAU) will conduct an internal review of the application. If the application is complete and the proposed project is acceptable the UAU will prepare a permit and any special conditions that apply to that permit. Two copies of the completed permit are forwarded to the State Archeologist for his or her review and signature. The copies are then sent to the permittee for his or her signature, with one copy retained by the permittee and the second copy returned to the UAU.

The following procedures, taken from T07:04R of the North Carolina Administrative Code, pertain to the application, review, and issuance of an Underwater Archaeology Permit.

.1003 DEPARTMENT AUTHORIZED TO GRANT PERMITS AND LICENSES

- (a) The Department of Cultural Resources may grant permits for the exploration, recovery or salvage of abandoned shipwrecks and of underwater archaeological artifacts in given areas of state-owned bottoms of navigable waters. No exploration, recovery, or salvage operation on state-owned bottoms of navigable waters during which abandoned shipwrecks or under water archaeological artifacts may be removed, displaced, or destroyed shall be conducted by any person, firm, corporation, institution or agency without having first received the appropriate permit or license from the Department. After issuance no permit, or any part thereof, shall be assigned or sublet.

- (b) Obtain application forms from and submit completed permit applications to:

Underwater Archaeology Unit
Division of Archives and History
P.O. Box 58
Kure Beach, North Carolina

.1004 EXCEPTIONS

No permit is required for employees of the Department of Cultural Resources for exploration, recovery or salvage operations being conducted as part of the official responsibilities of the Department.

.1005 PERMIT FOR EXPLORATION: RECOVERY OR SALVAGE

- (a) An exploration, recovery, or salvage permit will be issued providing:
 - (1) the applicant has adequate funds, equipment, and facilities to undertake and complete the operation, is capable of providing supervision of all phases of the operation and has demonstrated the ability to carry out acceptable exploration, recovery or salvage projects;
 - (2) the proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;
 - (3) the proposed activity employs accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in exploration, recovery and salvage projects; and
 - (4) the underwater archaeological artifacts recovered during the proposed project will be properly conserved and these artifacts and copies of associated archaeological records and data will be curated in an acceptable manner.
- (b) The Department of Cultural Resources shall have decision-making authority concerning the issuance of a permit. A permit shall be issued or denied within 30 days of the acceptance by the Department of a completed application. Major inadequacies, such as unacceptable goals, objectives, methodologies or techniques, or the lack of sufficient funding or professional staff, shall be reasons for permit denial and will be clearly spelled out in the denial notice.

.1006 TERMS AND CONDITIONS OF PERMITS

- (a) An underwater archaeological permit will contain all conditions governing that particular exploration, recovery or salvage project. Should these conditions conflict with the terms of the application, these permit conditions shall take precedence.
- (b) A permit will normally be granted for a period of one year and may be renewed after review of an extension request and evaluation of past performance.
- (c) The Permittee agrees to submit for review to the Department a draft report, detailing project activities and results within 120 days after completion of the fieldwork, and a final report 60 days after Department approval of the draft.

- (d) The Permittee agrees to keep a daily log of all project activities including the types of equipment used, site conditions, and other project-specific data and to provide copies to the Department upon request.
- (e) The Permittee is responsible to the Department for accuracy and validity of the data contained in the final report submitted to the Department. The report and copies of requested data will become part of the permanent data on file with the Department.
- (f) The Department reserves the right to have a designated agent present during activities carried out under the terms of the permit.
- (g) The Department is not liable or responsible for any accident or injury to any person or the loss or damage to any equipment connected with the permit.
- (h) Failure to diligently pursue the work after it has been started, or to comply with any of the provisions of the permit or of these requirements, may result in revocation of the permit.

.1007 APPEALS RELATING TO PERMITS

Any person may appeal permit issuance, denial, suspension or revocation through appeals procedures established in Article 3 of G.S. 150B.

.1008 OWNERSHIP AND DIVISION OF RECOVERED ITEMS

All abandoned shipwrecks and underwater archaeological artifacts recovered in the waters of the State of North Carolina shall belong to the State of North Carolina. Such underwater archaeological artifacts as are recovered under the proper permit may be granted, in whole or in part, to the Permittee as proper compensation for his efforts in recovering such objects and the title to and ownership of these objects then is transferred to that Permittee. Determination of which of the recovered objects will be granted to the Permittee will be made by the Department acting in the best interest of the state and giving due consideration to the fair treatment of the Permittee. The terms of the division are to be expressed as a percentage, and the percentage of the state's share and the percentage of Permittee's share shall be stated on the permit at the time of its issuance. All recovered artifacts shall be stated on the permit at the time of its issuance. All recovered artifacts shall be placed and retained in safekeeping. The places of safekeeping shall be approved by the secretary or a duly authorized agent of the Department. At the time of the division of items that have been recovered by those having permits for salvage with the Department there shall be present such member or members of the staff of the Department of Cultural Resources as the Secretary of the Department of Cultural Resources shall deem necessary and appropriate.

APPENDIX M: Brief Description of NCEPA Applicability

(after the July 17, 1998, memorandum to the Coastal Resources Commission prepared by Robin W. Smith, Assistant Attorney General)

The North Carolina Environmental Policy Act, N.C.G.S. §113A-1, *et seq.* (NCEPA) requires state agencies to prepare a report on the environmental impacts of “any action involving expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of [the] State.” N.C.G.S. §113A-4. The Act exempts several categories of activities, including any project covered by a Coastal Area Management Act (CAMA) general permit.

Under the NCEPA, state agencies have the authority to adopt “minimum criteria” identifying specific types of projects and programs that would not be expected to have significant effect on the quality of the environment. These minimum criteria must be adopted as rules under the State’s Administrative Procedure Act (N.C.G.S. §150B). The Department of Environment and Natural Resources has adopted a set of minimum criteria, most recently amended in 1996, to be used by programs within DENR.

Under rules adopted by the Department of Administration (DOA) pursuant to the NCEPA, an environmental document must be prepared for any project that does not fall under minimum criteria. The document may take the form of a full environmental impact statement (EIS) or less comprehensive environmental assessment (EA). An EA is sometimes prepared in order to determine whether a full EIS is necessary. An EA alone will be sufficient only if the information in the EA supports a finding that the proposed activity will not have a significant impact on the environment, *i.e.*, a “Finding of No Significant Impact” or “FONSI.”

N.C.G.S. §113A-4 outlines the contents of an environmental impact statement:

- a) The environmental impact of the proposed action;
- b) Any significant adverse environmental effect, which cannot be avoided...;
- c) Mitigation measures...;
- d) Alternatives to the proposed action;
- e) The relationship between the short-term uses of the environment... and the maintenance and enhancement of long-term productivity; and
- f) Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

The NCEPA is purely a procedural statute. Nothing in the Act requires an agency to avoid projects with adverse environmental impacts or to choose the least environmentally harmful alternative. The Act is primarily a vehicle for providing information to the public on the environmental impacts of proposed projects in the expectation that the political process will be the means of influencing a state agency’s decision to pursue or permit a project with adverse

impacts. Under N.C.G.S. §113A-5, an environmental document concluding that a proposed project will unavoidably result in major adverse changes in the environment or conflicts in the use of natural resources must be presented to the Governor for review.

Since NCEPA imposes only procedural requirements on state agencies, litigation surrounding implementation of the Act focuses on adherence to the procedure. Most often, the controversies that arise under NCEPA concern: (1) failure to prepare an environmental document for a particular project; or (2) the adequacy of an environmental document. Challenges to the adequacy of an environmental document frequently focus on failure to consider the secondary and cumulative impacts of the proposed project.

With regard to the first issue, the NCEPA requires an environmental document only where there is “an action involving the expenditure of public moneys or use of public land.” Thus, there must be both: 1) an agency “action” (such as permit approval); and 2) use of public monies or public land in the project that is the subject of the agency action.

In implementing CAMA, the NCEPA most often becomes an issue in the permitting of structures on state-owned submerged lands. Many of those structures, such as small docks and piers, are exempt from NCEPA under either the statutory exemptions or DENR’s minimum criteria. Marinas are an example of a type of project that would not be exempt and therefore would require an environmental document based on use of state-owned submerged lands. For projects requiring an environmental document under the NCEPA, the CAMA permit application is not complete until an appropriate environmental document has been submitted (see 15A NCAC 7J.0204).

APPENDIX N: Memo to Secretary Bill Holman



January 5, 2000

MEMORANDUM

TO: Sec. Holman

THROUGH: Robin Smith

FROM: Donna Moffitt *Donna*

SUBJECT: Letter to Col. DeLony of the Corps of Engineers

The Division of Coastal Management was given the charge of working with a team of individuals from various state agencies to develop policy recommendations for log salvaging operations in North Carolina. Due to the potential increase in log salvage permit applications, the Submerged Log Salvage Policy Development Team has been working diligently to review the environmental as well as the social and economic issues that exist due to log salvagers wanting to retrieve submerged, old-growth logs from the bottom of North Carolina's rivers.

An issue has arisen in which the team requested that you write to Col. DeLony immediately. I am including a letter for your signature. Briefly, the Wilmington District has decided not to exercise jurisdiction over submerged log salvage operations. Other districts apparently do exercise jurisdiction. By not exercising jurisdiction, the Corps has cut off the ability of 1) other federal resource agencies to officially comment and 2) DWQ to review proposed projects for a 401 Water Quality Certification. Additionally, when projects are proposed for water bodies outside of CAMA jurisdiction, the only permit comes from the Department of Cultural Resources (DCR), which has no expertise in reviewing projects for or seeking comments on natural resource impacts. Also, DCR has no authority to place permit conditions that would protect natural resources on its permits. If the Corps and DWQ review all proposed projects, the protective permit conditions can be included through the Sec. 404 permit or Sec. 401 certification.

If you have any questions or concerns pertaining to this matter, please do not hesitate to contact me at 733-2293, extension 224. The Submerged Log Salvage Policy Development Team and I appreciate your time and attention to this matter.

Enclosure



N.C. Division of Coastal Management
Donna D. Moffitt, Director

Access <http://dcm2.enr.state.nc.us/> for further information on the Division and to print additional copies of this report.

100 copies of this document were printed