

**Agenda Item:** 14-43 **Request to Proceed to Public Hearing with the Proposed Reclassification of Cape Fear River Section in New Hanover and Brunswick Counties from Class SC to Class SC Sw with a Water Quality Management Plan (Action Item)**

**Explanation:**

The Lower Cape Fear River Program has requested that a segment of the lower Cape Fear River in New Hanover and Brunswick Counties be reclassified from Class SC to Class SC Sw. This reclassification concerns the portion of the Cape Fear River from the upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut, where the Intracoastal Waterway (ICW) meets the river. According to the reclassification request, "...the DO standard of 5 mg/l for the Lower Cape Fear River Estuary is not appropriate since it is not achieved a significant portion of the time as a result of natural drainage from riverine wetlands and salt marshes;" in addition, the reclassification request states that "From a regulatory standpoint, a straightforward way to deal with this issue is to reclassify the area with the supplemental Sw classification."

The subject waters are proposed to be reclassified from Class SC to Class SC SW with a water quality management plan. The proposed Sw reclassification would allow, if caused by natural conditions, the pH of the subject waters to reach as low as 4.3 (compared to the currently required 6.8 – 8.5 range) and the DO to be lower than currently required 5 mg/l , and in turn, may result in the removal of this segment from the state's TMDL list for DO and/or pH; thus, this proposal serves the public interest per Executive Order #70 and complies with G.S. 150B, the Administrative Procedures Act (APA). In addition, the proposed water quality management plan codifies the permitting policy already in place for new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges to the subject waters. The proposed reclassification and management plan spell out a path forward for these discharges and enables the community to plan accordingly.

Wetlands, developed lands, other open waters, forest lands, shrub/scrub lands and swamp tributaries exist directly adjacent to the subject waters. Several tidal saltwater species, including the federally endangered shortnose and Atlantic sturgeons, live in the proposed waters. Within the subject waters, there are eight existing individual NPDES wastewater discharges, currently no known planned new such discharges, and one planned expansion of an existing individual NPDES wastewater discharge that already meets the proposal's requirements.

At the July 2014 Water Quality Committee (WQC) meeting, the WQC granted staff approval to proceed to the full Environmental Management Commission (EMC) with the proposal. The fiscal analysis' results show no quantifiable cost or benefit to the ecosystem, humans, implementing agencies, and new and expanding individual NPDES wastewater discharges. The proposed effective date for this proposal is November 1, 2015.

**Recommendation:**

That the EMC approve the fiscal note and grant staff approval to proceed to public hearing with the proposed reclassification and management plan.