



NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

BRAXTON C. DAVIS  
Director

CRC-19-20

July 2, 2019

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Jonathan Howell

**SUBJECT:** Proposed Rule Language for 15A NCAC 07K.0214 – Shellfish Lease Exemption

Since 2015, the number of shellfish lease applications processed by the NC Division of Marine Fisheries has increased from approximately 10 to approximately 50 per year. Presently, greater than half of the lease requests are intended for stacked cages and/or water column equipment that are more intensive uses of public trust waters and submerged lands.

Considering the Coastal Resources Commission's authority for regulating development in Public Trust and Estuarine Waters, the Divisions of Marine Fisheries and Coastal Management agreed in 2016 that DCM should have a consulting role in the review of proposed shellfish leases. DCM has been reviewing shellfish leases and providing comments for two complete shellfish leasing cycles and this process has proven to be useful in the review of applications.

Through these informal comments, DCM has been recommending that DMF establish buffers adjacent to coastal wetlands, avoid impacts to navigation, and limit boundary markers to less than four inches in diameter. To build on lessons learned over the past two years, DCM staff presented draft exemption language at your February 2019 CRC meeting that was intended to provide clarity to DMF and the public applying for a shellfish lease as to when a CAMA permit would be required. The Commission directed DCM staff to gather further data associated with the types of activities that occur on leases, as well as provide additional information on the interests of other resource agencies and shellfish growers. DCM staff and two commissioners attended a meeting with shellfish growers hosted by the NC Coastal Federation on March 21<sup>st</sup> to discuss the proposed rule language, and also hosted a mock scoping meeting for a hypothetical lease to gather information and feedback from other resource agencies on the draft lease exemption language. Staff will provide an update on these efforts at your July meeting.

Staff believes formalizing this exemption will reduce unnecessary gear, staging areas, and pilings by requiring an additional permit review by multiple agencies for any leases that exceed the thresholds outlined below. Staff looks forward to reviewing the proposed shellfish lease exemption at our upcoming meeting in Morehead City.



**15A NCAC 07K .0214 EXEMPTION FOR SHELLFISH LEASES**

Structures and gear associated with a shellfish aquaculture lease issued by the Secretary pursuant to G.S. 113-202, 113-202.1, and 113-202.2 are exempt from CAMA permit requirements provided the following criteria are met:

- (1) All posts, including anchoring and marking posts, are less than 4" in diameter;
- (2) Floating platforms are limited to floating upweller systems with no greater than four-foot walkways between and around the upwellers/raceways with no portion used for storage or staging areas.
- (3) No wave baffles or other structures are proposed for the purpose of wave attenuation;
- (4) No docking facilities, slips, or fixed platforms are proposed;
- (5) All markers, structures and fishing gear associated with the shellfish aquaculture lease are located a minimum of 20 feet waterward of any coastal wetland vegetation that borders the waterbody;
- (6) No enclosed or roofed structures are installed; and
- (7) No shore-based electric, water or other utilities are used to service an open water lease.