



NORTH CAROLINA  
Environmental Quality

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Governor

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Secretary

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Director

CRC-19-28

September 9, 2019

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Jonathan Howell

**SUBJECT:** Draft General Permit for Structures located within a Shellfish Lease

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 Commissioner, Bob Emory and Laura Salter attended a meeting with shellfish growers hosted by the NC Coastal Federation on March 21 to discuss the proposed rule language, and also hosted a mock scoping meeting with other resource agencies for a hypothetical lease to gather information and feedback on the draft lease exemption language. Staff provided information on regulatory concerns of other resource agencies at your July meeting. At that time, the Commission directed staff to draft a General Permit for structures located within the bounds of a shellfish lease.

Attached is a draft General Permit that introduces a riparian property and local government notification process, piling size limitations, limitations on floating upweller systems, and other guidance associated with rules of the CAMA as well as incorporating concerns of other resource agencies. To date, DCM has only received initial feedback from staff at the Division of Marine Fisheries. While the draft permit language below requires further improvements, we will be presenting this as a conceptual model for further discussion and guidance during the September meeting, and request that further rulemaking be delayed until further stakeholder engagement, agency feedback, and modifications are addressed. I look forward to our discussion in Wilmington.



*Proposed 15A NCAC 7H .2800 GENERAL PERMIT FOR STRUCTURES OR PILINGS WITHIN THE BOUNDARIES ASSOCIATED WITH A SHELLFISH AQUACULTURE LEASE ISSUED BY THE SECRETARY PURSUANT TO G.S. 113-202, 113-202.1, and 113-202.2 - September 19, 2019*

**SECTION .2800 - GENERAL PERMIT FOR STRUCTURES OR PILINGS WITHIN THE BOUNDARIES ASSOCIATED WITH A SHELLFISH AQUACULTURE LEASE ISSUED BY THE SECRETARY PURSUANT TO G.S. 113-202, 113-202.1, and 113-202.2**

**15A NCAC 07H .2801 PURPOSE**

A general permit pursuant to this Section shall allow the placement of structures or pilings in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

*History Note: Authority G.S. 113A-107; 113A-118.1;*

**15A NCAC 07H .2802 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development pursuant to Paragraph (b).

(b) The applicant shall provide:

- (1) information on site location, dimensions of the project area, and his/her name and address;
- (2) a dated plat(s) showing existing and proposed development; and
- (3) evidence that:

(A) the riparian property owners of the riparian area in which the lease is located have been notified by certified mail of the proposed work. The notice shall instruct riparian property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 calendar days of receipt of the notice, and, indicate that no response shall be interpreted as no objection.

(B) the local government in which the lease is located has been notified of the proposed work.

(c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within 120 days of permit issuance or the general authorization expires, and a new permit shall be required to begin or continue construction.

*History Note: Authority G.S. 113A-107; 113A-118.1;*

**07H .2803 PERMIT FEE**

The applicant shall pay a permit fee of two hundred dollars (\$200.00). This fee shall be paid by check or money order made payable to the Department.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1;*



#### **15A NCAC 07H .2804 GENERAL CONDITIONS**

- (a) Structures and Pilings authorized by this permit shall be for the exclusive use of the shellfish lease holder(s) in whose name the permit is issued. A “piling” is any pole larger than 4” in diameter. A “structure” is any material or object not specifically excluded from the definition of development as listed in GS 113A-103(5)(a) or other gear used for the growing of shellfish as defined by the Division of Coastal Management.
- (b) There shall be no interference with navigation or use of the waters by the public by the existence of pilings or structures authorized by this permit.
- (c) This general permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity’s impact on adjoining properties or on water quality, air quality coastal wetlands, cultural and historic sites, wildlife, fisheries resources, or public trust rights.
- (d) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines in 7H .0200 et. seq. and local land use plans current at the time of authorization.
- (d) This permit does not eliminate the need to obtain any other required state, local or federal authorization.
- (e) Individuals shall allow authorized representatives of the Department of Environmental Quality to make periodic inspections at any time deemed necessary in order to be sure that the activity being-performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (f) This permit is not applicable in areas designated as a state nature preserve under G.S. 143-260.

*History Note:* Authority G.S. 113A-107; 113A-118.1;

#### **15A NCAC 07H .2805 SPECIFIC CONDITIONS**

- (a) Pilings associated with this lease shall not exceed 12” in diameter and shall be marked with permanent reflectors to make them more visible during hours of darkness or inclement weather.
- (b) Wave baffles or other structures used for the purpose of wave attenuation are prohibited.
- (c) Platforms whether floating or stationary, with the exception of operational floating upweller systems located within the lease area, are prohibited.
- (d) Floating upweller systems shall have no greater than four-foot walkways between and around the silos with no portion to be used for storage or staging areas.
- (e) Power shall be provided to the floating upweller systems through solar power only. No shore-based electric, water or other utilities shall be used to service an open water lease.
- (e) Water depths at the location of the proposed floating upweller system shall be equal to or greater than two feet at normal low water level or normal water level.
- (f) No single floating upweller system shall exceed 400 square feet with no more than (2) floating upweller systems per open water lease.
- (g) Floating upweller systems shall not have walls.
- (h) If the floating upweller system is powered by solar panels, the solar panels shall not extend more than 8’ above the water level.
- (i) Docking facilities, slips, moorings, fixed platforms and lighting are prohibited.
- (j) Enclosed or roofed structures are prohibited.
- (k) Any modification to the location of pilings or structures including the enlargement of authorized activities associated with this permit shall require additional authorization by the Division.
- (l) Floating upweller systems shall not be secured by pilings.

*History Note:* Authority G.S. 113A-107; 113A-118.1;

