

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF MARSH SILLS

15A NCAC 07H .2701 PURPOSE

Persons seeking to construct marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters shall apply for a General Permit according to the rules in this Section. Marsh sills are defined as sills that are shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Temporary Amendment Eff. April 1, 2019;
Amended Eff. July 1, 2019;
Readopted Eff. October 1, 2022.*

15A NCAC 07H .2702 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

- (1) the site location, dimensions of the project area, and his or her name and address; and
- (2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or
- (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Amended Eff. October 1, 2007;
Readopted Eff. October 1, 2022.*

15A NCAC 07H .2703 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 of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022.*

15A NCAC 07H .2704 GENERAL CONDITIONS

- (a) Permittees shall allow authorized representatives of the Department of Environmental Quality (DEQ) to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
- (b) The placement of marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (c) The permit set forth in this Section 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 because there are unresolved questions concerning the proposed activity's impact Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Temporary Amendment Eff. April 1, 2019;
Amended Eff. July 1, 2019;
Readopted Eff. October 1, 2022.*

15A NCAC 07H .2705 SPECIFIC CONDITIONS

- (a) A General Permit issued pursuant to this Section shall be applicable only for the construction of marsh sill structures built in conjunction with existing, created, or restored wetlands. Planted wetland vegetation shall consist only of native species per G.S. 113A-113(b)(1).
- (b) The landward edge of the sill shall be positioned no greater than 30 feet waterward of the normal high water or normal water level or five feet waterward of the existing wetlands, whichever distance is greater.
- (c) The permittee shall maintain the authorized sill, including wetlands and tidal inundation, in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification of noncompliance from the Division of Coastal Management.
- (d) The height of sills shall not exceed 12 inches above normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is higher.
- (e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.
- (f) The sills shall have at least one five-foot opening every 100 feet and may be staggered, overlapped, or left open as long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.
- (g) The sill structure shall not exceed a slope of a one and a half foot horizontal distance over a one foot vertical rise. The width of the structure on the bottom shall not exceed 12 feet.
- (h) For water bodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one sixth (1/6) the width of the waterbody at any point along its alignment.
- (i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.
- (j) The sill shall not interfere with leases or franchises for shellfish culture.
- (k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the normal high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge, as illustrated in 15A NCAC 07H .1205(t). Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.
- (l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above normal high water or normal water level and shall be maintained for the life of the structure.
- (m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed upon completion of the construction of the sill structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless contained in a containment structure supported by construction mats.
- (n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.
- (o) No excavation or filling, other than that necessary for the construction and bedding of the sill structure, is authorized by this general permit.
- (p) Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation as defined by the N.C. Marine Fisheries Commission.

- (q) Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.
- (r) No excavation of the shallow water bottom or any wetland is authorized by this general permit.
- (s) The sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken concrete, or other similar materials that are approved by the N.C. Division of Coastal Management. Sill material shall be free of loose sediment or exposed rebar. The sill material shall be of sufficient size and slope to prevent its movement from the approved alignment by wave or current action.

*History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-118.1;
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Eff. April 1, 2005;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));
Temporary Amendment Eff. April 1, 2019;
Amended Eff. July 1, 2019;
Readopted Eff. October 1, 2022.*