

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director



NORTH CAROLINA
Environmental Quality

CRC-22-27

November 2, 2022

MEMORANDUM

TO: Coastal Resources Commission

FROM: Daniel Govoni

SUBJECT: Amendments to 15A NCAC 7M .0600 & 7H. 0208 and Fiscal Analysis
Floating Structure Policies/Floating Upweller Systems

Over the last couple of years, the Commission has had numerous discussions and presentations related to shellfish aquaculture leases, CAMA jurisdictional issues, and the Division's involvement in the review of proposed shellfish leases. More recently, there have been ongoing discussions regarding floating structures, specifically processing facilities, and whether they should be allowed within a shellfish lease. At your last meeting, it was concluded to not amend the 15A NCAC 7M .0600 Floating Structure Policies to allow floating processing facilities or other platforms within a shellfish lease. Instead, a decision was made to consider requests for floating structures through the variance process.

The Commission has also discussed the use of Floating Upweller Systems (FLUPSYs), which are used to grow out shellfish and protect them from predation until they reach a specific size to survive within a shellfish lease. In November 2020, the Commission approved proposed rule amendments and the corresponding fiscal analysis, and a public hearing was conducted May 2021. The amendments were subsequently approved by the Commission; however, the rules were never submitted to the Rules Review Commission for final approval due to ongoing discussion regarding floating structures. Staff proposes to restart the rule making process to address FLUPSYs as floating structures.

The previously approved amendments would incorporate FLUPSYs into the 7M .0600 Floating Structure Policy, thereby requiring them to be sited in a permitted marina or at a private docking facility where they would be subject to the same platform area limitations that apply to private docking facilities elsewhere in your rules. The General Policy in 15A NCAC 07M .0601 states "... that the general welfare and public interest require that floating structures to be used for residential or commercial purposes not infringe upon the public trust rights nor discharge into the public trust waters of the coastal area of North Carolina," and that this has remained unchanged since its adoption in 1983. However, the Division believes subject to the above limitations, such



a management strategy for this industry can accommodate these structures while limiting public trust impacts.

To permit FLUPSYs at a private docking facility through the CAMA Major Permit process, staff proposes amendments to 15A NCAC 07H .0208(b)(6) Piers and Docking Facilities, adding a reference to 7H .0208(b)(5) Marinas, as well as amendments to 7M .0602 and 7M .0603 Floating Structure Policies, as follows:

15A NCAC 7H .0208(b)(6)(B) - the amendment to this rule includes platforms in the calculation of square footage of shading impacts and clarifies that floating upweller systems are part of the allowance of shading impacts associated with docking facilities.

15A NCAC 7M .0603 – adds floating upweller systems definition and clarifies that FLUPSYs may be permitted as a platform at a private docking facility in accordance with 15A NCAC 7H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 7H .0208(b)(5). The amendments to both rules clarify how FLUPSYs fit within the Commission’s existing regulatory framework, providing guidance to property owners and a clear regulatory path for shellfish growers.

Additional amendments are being proposed to the Floating Structure Policy due to recent Rules Review Commission responses to the Division’s Periodic Review of Existing Rules, and I will discuss these in more detail at the meeting.

Fiscal Impacts

The Division does not anticipate any increase in expenditures for local governments or NC DOT and while shellfish growers will see a cost of \$2,000 over the next five years related to permit fees, they will benefit from clear permitting process to site these structures as part of shellfish aquaculture operations. The proposed amendments to 15A NCAC 07H .0208 and 07M .0600 are necessary for rule clarification and permitting process/implementation issues related to the growing shellfish aquaculture industry in North Carolina. Private property owners/shellfish growers may also see a benefit from a clear process for siting such structures resulting in a time savings. There will also be a potential benefit in that clear regulatory guidance may decrease navigation issues and user conflicts associated with riparian property owner objections. Staff is recommending approval of the fiscal analysis for public hearing.

I look forward answering any questions you may have regarding this fiscal analysis and the proposed rule amendments at the upcoming meeting.

15A NCAC 07H .0208 USE STANDARDS

(b) Specific Use Standards

(6) Piers and Docking Facilities.

- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
- (B) The total square footage of shaded impact for **docks, docks, platforms** and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water



slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;

- (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
- (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
- (G) Pier and docking facility length shall be limited by:
 - (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public;
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals, or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved,



- the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

SECTION .0600 - FLOATING STRUCTURE POLICIES

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that floating structures to be used for residential or commercial purposes not infringe upon the public trust rights nor discharge into the public trust waters of the coastal area of North Carolina.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

15A NCAC 07M .0602 DEFINITIONS

- (a) A boat is a vessel or watercraft of any type or size specifically designed to be self propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.
- (b) A "floating structure" is any structure, not a boat, supported by a means of flotation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure will be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

15A NCAC 07M .0603 POLICY STATEMENTS

- (a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in permitted marinas.
- (b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.
- (c) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purpose of this rule, floating upweller systems are considered floating structures.
- (b) Floating upweller systems may be permitted as a platform at a private docking facility in accordance with 15A NCAC 7H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 7H .0208(b)(5)

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.



Fiscal & Regulatory Impact Analysis

**FLOATING STRUCTURES POLICY, DOCKS AND PIERS
FLOATING UPWELLER SYSTEMS
15A NCAC 07M .0600 & 15A NCAC 07H .0208(b)**

Prepared by

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November 7, 2022

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC).
Title	Floating Structures Policies and Specific Use Standards for Docks and Piers – Floating Upweller Systems
Citation	15A NCAC 07M .0600 and 15A NCAC 07H .0208
Description of the Proposed Rule	7M .0600 outlines the Commission regarding the siting of floating structures in public trust waters; and 7H .0208 contains the specific use standards for docks and piers. These rule amendments will allow the use of Floating Upweller Systems to be sited in marinas and as platforms for shellfish cultivation.
Agency Contact	Mike Lopazanski Deputy Director Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext. 223
Authority	113A-107(a) & (b); 113A-118.1
Necessity	The Coastal Resources Commission’s floating structure policies do not specifically address Floating Upweller Systems used in shellfish aquaculture operations. These amendments clarify how they may be sited in public trust waters.
Impact Summary	State government: Yes Local government: No Private property owners: Yes Shellfish growers: Yes Substantial impact: No

Summary

Due to the expanding shellfish aquaculture industry in North Carolina and the increasing demand for shellfish water column leases with associated gear, the Coastal Resources Commission has been discussing ways to formalize the division's role in reviewing leases, and which activities might be suitable for CAMA permitting through CRC rulemaking. The Commission is proposing amendments to 15A NCAC 07M policies for floating structures to specifically state floating upweller systems are floating structures and are allowed at private docks as well as marinas. To allow floating upweller systems at a private docking facility, the Commission is proposing amendments to 15A NCAC 07H .0208(b)(6) Piers and Docking Facilities, a reference to 7H .0208(b)(5) Marinas as well as amendments to 7M .0603 Floating Structure Policies. Additionally, the Commission is proposing to repeal 15A NCAC 07M .0602 due to recent Rules Review Commission responses to the Division's Periodic Review of Existing Rules.

Description of Rule Amendment

In 2016, the Divisions of Marine Fisheries (DMF) and Coastal Management (DCM) agreed that DCM should have a commenting role during the review of proposed shellfish lease applications. This commenting process is consistent with existing statutory authorities that grant the DMF Director discretion in determining the suitability of proposed shellfish lease sites and activities. Since that time, DCM has been reviewing shellfish leases and providing comments to DMF for four complete shellfish leasing cycles (April – September).

Through this commenting process, DCM has generally recommended that DMF establish a 20' buffer between coastal wetlands and shellfish leases that utilize gear. In addition, DCM has often commented on navigational impacts associated with proposed shellfish lease locations, the size of pilings, and the need for riparian property owner coordination. DCM also requested that DMF notify shellfish lease applicants that CAMA permits will be required for any shellfish leases proposing to include structural elements or gear that are over and above those typically associated with shellfish aquaculture operations in NC; for example, those applications including floating structures other than aquaculture gear, or land-based utilities.

DCM staff has noticed an increase in requests for structural components that may require a CAMA permit, including larger or greater densities of pilings to anchor gear, new growing systems, work platforms, and floating upweller systems. DCM can address some of these requests through the CAMA Major Permit process, but CRC Rules lack specific use standards that apply to floating upweller systems. Without clear guidance there is an increased likelihood of navigation issues, user conflicts and riparian property owner objections. These issues may result in an increase in agency staff time devoted to judicial proceedings as well as delays and uncertainty for shellfish growers.

15A NCAC 7H .0208(b)(6)(B) - the amendment to this rule includes platforms in the calculation of square footage of shading impacts. CRC rules allow the total square footage of shaded impact for docks and mooring facilities to be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. The Commission, while allowing the use of floating upweller systems at residential docking facilities, clarifies that these systems, which include an area of working platform, are part of the allowance of shading impacts associated with docking facilities.

15A NCAC 7M .0603 – clarifies in the policy statements that c) *A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purpose of this rule, floating upweller systems are considered floating structures.* and (b) *Floating upweller systems may*

be permitted as a platform at a private docking facility in accordance with 15A NCAC 7H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 7H .0208(b)(5). The CRC's existing rules require that floating structures to be used for residential or commercial purposes not infringe upon the public trust rights nor discharge into the public trust waters of the coastal area of North Carolina. These amendments clarify how FLUPSYs fit within the Commission's existing regulatory framework, providing guidance to property owners and a clear regulatory path to potential shellfish growers.

15A NCAC 7M .0602 is proposed to be repealed due to recent Rules Review Commission responses to the Division's Periodic Review of Existing Rules.

Affected Parties

Private Property Owners/Shellfish Growers:

These rule amendments do not result in an added cost to property owners generally since the rules only apply when a property owner intends to utilize a floating upweller system for the cultivation of shellfish as part of their residential docking facility. In this case a CAMA Major Permit application fee of \$400 will be required. There may also be a cost to shellfish growers wishing to site a floating structure in a permitted marina - also \$400 application fee. To date, DCM has seen three applications for floating upweller systems and expects to see one additional application per year over the next five years for a total fiscal impact of \$2,000. Private property owners/shellfish growers may also see a benefit from a clear process for siting such structures resulting in a time savings. There will also be a potential benefit in that clear regulatory guidance may decrease navigation issues and user conflicts associated with riparian property owner objections.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the agency declares that the proposed amendments to 15A NCAC 7H .0208 and 15A NCAC 07M .0600 will not affect environmental permitting for the NC Department of Transportation as NC DOT does not utilize such structures.

Local Government:

DCM does not anticipate any increased costs to local governments as a result of the proposed rule amendments as local government do not typically utilize such structures.

Division of Coastal Management:

The Division anticipates one additional Major Permit application (\$400) per year resulting in an increase in permit fees of \$2,000 over the next five years. The division and other state review agencies may realize a time benefit from having a clear process for the siting of such structures within the existing regulatory framework.

Cost/Benefits Summary

The Division of Coastal Management does not anticipate any increase in expenditures for local governments or NC DOT and while shellfish growers will see a cost of \$2,000 over the next five years for CAMA permitting, they will benefit from clear permitting process to site these structures as part of shellfish aquaculture operations. The proposed amendments to 15A NCAC 07H .0208 and 07M .0600 are necessary for rule clarification and permitting process/implementation issues related

to the growing shellfish aquaculture industry in North Carolina. Private property owners/shellfish growers may also see a benefit from a clear process for siting such structures resulting in a time savings. There will also be a potential benefit in that clear regulatory guidance may decrease navigation issues and user conflicts associated with riparian property owner objections.

15A NCAC 07H .0208 USE STANDARDS

(b) Specific Use Standards

- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
 - (B) The total square footage of shaded impact for ~~docks~~ docks, platforms and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
 - (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
 - (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas;
 - (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
 - (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
 - (G) Pier and docking facility length shall be limited by:
 - (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
 - (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
 - (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so

that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

SECTION .0600 - FLOATING STRUCTURE POLICIES

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15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

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History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

15A NCAC 07M .0602 DEFINITIONS

- (a) A boat is a vessel or watercraft of any type or size specifically designed to be self propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.
- (b) A "floating structure" is any structure, not a boat, supported by a means of flotation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure will be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.

15A NCAC 07M .0603 POLICY STATEMENTS

- (a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in permitted marinas.
- (b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.
- (c) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purpose of this rule, floating upweller systems are considered floating structures.
- (b) Floating upweller systems may be permitted as a platform at a private docking facility in accordance with 15A NCAC 7H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 7H .0208(b)(5)

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);
113A-124(c)(5);
Eff. July 1, 1983.