

**PROPOSED RULES**

(d) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies of notices to those who have submitted a request.

(e) The Director may satisfy the requirements in Paragraphs (b) and (c) of this Rule by issuing a notice that complies with both Paragraphs.

(f) Any Consent Order may be amended by the Director to incorporate minor modifications, such as modification of standard conditions to reflect updated versions, correction of typographical errors, or interim date extensions, in a consent order without public notice provided that the modifications do not extend the final compliance date by more than four months.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110.*

**15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS**

(a) The Director shall take final action for the Commission on Consent Orders for which a public hearing has not been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice.

(b) The Commission shall take final action on Consent Orders for which a public hearing has been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 90 days following the hearing.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110.*

**15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED WITHOUT CONSENT**

For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the procedure set out in G.S. 150B-23 to contest the Special Order.

*Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b).*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2201, .2202, .2204, and .2205.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** December 1, 2017

**Public Hearing:**

**Date:** July 12, 2017

**Time:** 1:30 p.m.

**Location:** Holiday Inn, 203 SW Greenville Blvd., Greenville, NC 27834

**Reason for Proposed Action:** *Section 07H .2200 defines specific development requirements for the construction of Freestanding Moorings. The Coastal Resources Commission is proposing to amend its administrative rules to expand this General Permit to include bird nesting poles as well as make this General Permit consistent with General Permit 07H .1200.*

**Comments may be submitted to:** *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808*

**Comment period ends:** August 14, 2017

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .2200 - GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN HAZARD AREAS**

**15A NCAC 07H .2201 PURPOSE**

A general permit pursuant to this Section shall allow the construction of freestanding moorings and bird nesting poles 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,

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lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

*Authority G.S. 113A-107; 113A-118.1.*

**15A NCAC 07H .2202 APPROVAL PROCEDURES**

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

(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) confirmation evidence that:
  - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
  - (B) 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 by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall review all comments. If DCM determines that:
    - (i) the comments are relevant to the potential impacts of the proposed project; and
    - (ii) the permitting issues raised by the comments are worthy of more detailed review; the Division of Coastal Management 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 the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit process, DCM shall notify the applicant that he must submit an application for a major development permit. permit shall be required.

(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.

*Authority G.S. 113A-107; 113A-118.1.*

**15A NCAC 07H .2204 GENERAL CONDITIONS**

(a) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

~~(b) A "bird nesting pole" is any pole or piling erected, with a platform on top, specifically with the purpose of attracting birds for nesting.~~

~~(b)(c) Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or any other commercial services.~~

~~(e)(d) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of freestanding moorings authorized by this permit.~~

~~(d)(e) This general permit may not be applicable to proposed construction when the Department determines that the proposal might significantly affect the quality of the human environment or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project shall be required according to 15A NCAC 07J.~~

~~(e)(f) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines in 7H .0100 et. seq. and local land use plans current at the time of authorization.~~

~~(f)(g) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural Resources 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.~~

~~(g) Freestanding mooring(s) shall not be transferable or assignable. Upon transfer of riparian property ownership, the mooring(s) must be removed by the original permittee unless a new permit is issued to the new riparian owner.~~

*Authority G.S. 113A-107; 113A-118.1.*

**15A NCAC 07H .2205 SPECIFIC CONDITIONS**

(a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high water line, or the normal water line, whichever is applicable.

(b) Freestanding moorings and bird nesting poles along federally maintained channels must meet US Army Corps of Engineers guidelines.

(c) Freestanding moorings in no case shall extend more than ~~4/3~~ 1/4 the width of a natural water body or man-made canal or basin.

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(d) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks 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. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of freestanding moorings. 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 property, 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.

(e) The total number of ~~docking/mooring~~ docking or mooring facilities to be authorized via a CAMA General permit, a Certificate of Exemption or any combination of the two ~~may permit~~ shall not exceed ~~four~~ two per property.

(f) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a previously permitted bird nesting pole shall require additional authorization from the Division of Coastal Management.

(~~f~~)(g) Freestanding moorings and bird nesting poles shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

(h) Freestanding moorings shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level under the General Permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

(i) Freestanding moorings located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

- (1) Water depth at the freestanding mooring location is equal to or greater than two feet of water at normal low water level or normal water level; and
- (2) The freestanding mooring is located to minimize the area of submerged aquatic vegetation or shellfish beds impacted under the structure as determined by the Division of Coastal Management.

(~~g~~)(j) Freestanding moorings and bird nesting poles shall not be established in submerged ~~cable/pipe~~ utility crossing areas or in a manner which interferes with the operation of an access through any bridge.

(~~h~~)(k) Freestanding moorings and bird nesting poles shall be marked or colored in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required

marking maintained for the life of the mooring(s). At minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.

(~~i~~)(l) Freestanding moorings must bear owner's name, vessel State registration numbers or U.S. Customs Documentation numbers. Required identification must be legible for the life of the mooring(s).

(~~j~~)(m) The type of material used to anchor a proposed mooring buoy(s) must be non-polluting and of sufficient weight and design to safely anchor the buoy and vessel.

(~~k~~) If use of any freestanding mooring authorized by this General permit is discontinued for a period of 12 months or more, it must be removed by the permittee.

(~~l~~)(n) Moorings buoys authorized by this General permit must be a minimum 12" in diameter or otherwise be designed to be easily recognized and not present a hazard to navigation.

(~~m~~) Existing freestanding moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the mooring(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then must comply with those guidelines of the Division in place at that time. In any event, existing moorings must comply with these Rules within two years.

(o) The platform located at the apex of the bird nesting pole shall not exceed 3'x 3' and shall not have sides.

(~~n~~)(p) This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal permit requirements are met prior to implementation of the project.

*Authority G.S. 113A-107; 113A-118.1.*

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### TITLE 20 – DEPARTMENT OF STATE TREASURER

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Local Government Commission intends to adopt the rules cited as 20 NCAC 03 .0409 and .0410.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.nctreasurer.com/inside-the-department/-OpenGovernment/proposed-rules/Pages/default.aspx>

**Proposed Effective Date:** *October 1, 2017*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Submit a written request for public hearing within 15 days after publication of the Notice of Text to: Dept of State Treasurer, Attn: Rulemaking Coordinator, 3200 Atlantic Avenue, Raleigh, NC 27604 or [dst.ncac@nctreasurer.com](mailto:dst.ncac@nctreasurer.com)*

**Reason for Proposed Action:** *Proposed rules are in accordance with statutory mandate at 159-28(f)(3) and 115C-441(f)(3) for the Local Government Commission to adopt rules that set forth when preaudit and disbursement certifications are not required for electronic transactions by local governments, public authorities or local school administrative units.*