



ROY COOPER

*Governor*

WILLIAM G. ROSS, JR.

*Acting Secretary*

BRAXTON DAVIS

*Director*

**CRC-17-01**

**January 20, 2017**

**MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Jonathan Howell  
**SUBJECT:** Approval of Fiscal Analysis for Amendments to 15A NCAC 7H .2200 General Permit for the construction of Freestanding Moorings in Estuarine Waters and Public Trust Areas and Ocean Hazard Areas

The CRC approved several proposed changes to your Freestanding Moorings and Osprey Pole General Permit, and staff has drafted the required fiscal analysis (attached). The Department has approved the fiscal analysis, and it is currently under review at the Office of State Budget and Management (OSBM). OSBM may require more information be included in the fiscal analysis, and receiving their approval of the analysis prior to CRC meeting is unlikely.

DCM's analysis found that this rule action will result in a net financial benefit, primarily to private property owners of approximately \$50 per permit plus the cost of drawings (\$1,000) for a total savings of \$1,050 per year. Assuming an annual maximum savings of \$1,050 the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$7,375, using a 7% discount rate. While the size of that benefit may change prior to final OSBM approval, any such changes are expected to be well below the threshold for being considered substantial which is defined as one million dollars or more in a 12-month period.

The commission has the option of approving the fiscal analysis at your next meeting, subject to changes requested by OSBM, which will allow the rules to proceed to public hearing. Alternatively, the commission can hold your approval until OSBM's approval is secured, and take action at your April meeting. At your upcoming meeting, staff will update the commission on the status with OSBM, and will be prepared to discuss these options with you.

attachment



## **Fiscal Analysis**

Amendment to the General Permit for the construction of Freestanding Moorings in Estuarine Waters and Public Trust Areas and Ocean Hazard Areas

Prepared by

Jonathan Howell  
NC Division of Coastal Management  
(252) 948-3851

January 18, 2017

## Basic Information

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Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Citations and Titles	15A NCAC 7H .2201 – Purpose 15A NCAC 7H .2202 – Approval Procedures 15A NCAC 7H .2204 – General Conditions 15A NCAC 7H .2205 – Specific Conditions
Description of the Proposed Rules	Section 7H .2200 defines specific development requirements for the construction of Freestanding Moorings. The proposed rule change amends language in Rules 7H .2201, 7H .2202, 7H .2204 and 7H .2205 to make the General Permit consistent with other rules related to General Permits for dockage as well as incorporates language for the permitting of bird nesting poles. This would also change the title of Section .2200 to reflect the Rule changes in this Section.
Agency Contact	Jonathan Howell District Manager, Washington Regional Office Jonathan.Howell@ncdenr.gov (252) 948-3851
Authority	113A-107; 113A-107(b); 113A-113(b)(6); 113A-118.1; 113A-119.1.
Necessity	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 7H .1200. The proposed rule changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private entities: Yes

## Summary

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In 1996, the Coastal Resources Commission (CRC) adopted Coastal Area Management Act (CAMA) General Permit 15A NCAC 7H .2200 for the construction of Freestanding Moorings. This General Permit was adopted to allow the public to receive a General Permit for residential moorings in Estuarine Waters.

Since this rule was last updated, the Commission has also adopted a number of rule changes to the General Permit for docking facilities (15A NCAC 07H .1200). These rule changes included requiring a minimum water depth of two feet within a Primary Nursery Area to place a formalized mooring, unless additional agency coordination occurs, limiting the number of slips allowed under a General Permit to two, and limiting docking facilities to 1/4 the width of the waterbody. This proposed rule amendment to 07H .2200 will make it consistent with the conditions presently applied to other permits that provide for the mooring of vessels (07H .1200). Additionally, the Division of Coastal Management (DCM) is approached periodically with requests for permits to construct Osprey Poles to attract ospreys for bird watching. Although the permitting of a single piling for this type of activity is not major development, the request does not fall within the parameter of any existing General Permit the CRC presently offers. Due to this circumstance, applicants have been required to obtain a CAMA Major Permit for this activity. This proposed rule change will alleviate the issue of requiring a Major Permit for an individual pole and provide conditions for the placement of bird nesting poles in Estuarine Waters.

The economic impacts of this proposed rule change are benefits to riparian property owners in terms of both time and fees. To continue to require a Major Permit for bird nesting poles, applicants must pay a fee of \$250 for the Major Permit. The adoption of this rule language would allow the applicant to pay a fee of \$200 for the General Permit for this activity. Applicants will also save the cost of design drawings (up to \$1,000) that often accompany a Major Permit application. Project applicants will also realize a time savings as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75 days under the Major Permit process. In addition, state and federal agencies will realize a time savings by not having to review these projects under the Major Permit process thereby devoting more time to other project reviews. Over the past 10 years, the Division has been approached about bird nesting poles on average of once per year. These requests are often abandoned due to the time and financial requirements to receive a CAMA Major Permit for a single pole for bird nesting. Based on agency staff experience, it is expected that project applications will increase to at least one per year due to shortened review time and removing the application drawing requirements that accompany a Major Permit. Assuming no change in the permit fee as well as removing the drawing requirements, the financial benefits to private riparian property owners would be approximately \$50 per permit plus the cost of drawings (\$1,000) for a total savings of \$1,050 per year. Assuming an annual maximum savings of \$1,050 the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$7,375, using a 7% discount rate. As mentioned above, there would also be additional time savings from the shortened review process.

These amendments will have no impact on NC Department of Transportation (NC DOT) projects, local governments or the federal government. It is estimated that DCM will see additional fee revenue of \$50 per year from the proposed rule amendments. Assuming an annual increase in permit fees of \$50, the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$351 using a 7% discount rate. DCM and other

state/federal permit review agencies will realize a time-savings benefit by not having to review applications for bird nesting poles under the more rigorous Major Permit process.

While local governments are eligible for the General Permit for Freestanding Moorings, they generally do not request such permits. These amendments therefore are not expected to have fiscal impacts on local governments. However, local governments may propose a bird nesting pole in which case they may also benefit from the decrease in permit fee and the permitting time savings should they apply for such a permit.

The proposed effective date of these amendments is September 1, 2017.

### **Description of Rule Amendment**

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15A NCAC 7H .2201 includes the purpose of the General Permit. This rule allows this General Permit to be used for the construction of bird nesting poles as well as Free Standing Moorings broadening the eligible activities this General Permit encompasses.

15A NCAC 7H .2202 outlines approval procedures of the General Permit. Amendments to this rule include updating standard language to detail at which point a General Permit may be elevated to a Major Permit when comments have been received offering objections to the proposed project.

15A NCAC 7H .2204 outlines General Conditions of the General Permit. Amendments to this rule are limited to defining what a bird nesting pole is and altering the lettering of the rules, as well as removing language regarding transfer or removal of the bird nesting pole or free standing mooring.

Since these rules were last updated, the Division has adopted a number of rule changes to the General Permit for docking facilities (15A NCAC 07H .1200). Proposed amendments to 15A NCAC 7H .2205 include requiring a minimum water depth of two feet within a Primary Nursery Area to place a formalized mooring, unless additional agency coordination occurs, limiting the number of slips allowed under a General Permit to two, and limiting docking facilities to 1/4 the width of the waterbody. This proposed rule change to 07H .2205 (General Conditions) will make it consistent with the conditions presently applied to other permits that provide for the mooring of vessels, as well as provide conditions for the permitting of bird nesting poles.

Based on these proposed rule amendments the title of Section .2200 is amended to reflect these changes.

### **Cost or Neutral Impacts**

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#### Private Property Owners:

The fiscal impact of the proposed rule changes are potential financial benefits to private riparian property owners in terms of both time and fees. Presently, a CAMA Major Permit is required for bird nesting poles and applicants must pay a fee of \$250 for the Major Permit. The adoption of this rule language would allow the applicant to pay a fee of \$200 for the General Permit for this activity resulting in a \$50 savings. Applicants will also save the cost of design drawings (up to \$1,000) that often accompany a Major Permit application. As DCM Staff expect there to be one

permit per year in requests, private riparian property owners will realize a cost savings of \$1,050 per year. Assuming an annual maximum savings of \$1,050 the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$7,375, using a 7% discount rate.

Project applicants will also realize a time savings as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75 days under the Major Permit process.

#### NC Department of Transportation (NC DOT):

While NC DOT is eligible for the General Permit for Freestanding Moorings, NC DOT generally does not request such permits and therefore pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .2201, 7H .2202, 7H .2204, 7H .2205 and Section .2200 will not affect environmental permitting for the NC DOT. Likewise, while NC DOT is eligible for the General Permit for bird nesting poles, DCM Staff have not seen requests in the past from NC DOT for such a project. However, NC DOT may propose a bird nesting pole as an enhancement to a NCDOT project in the future and if so, may realize a benefit from the decrease in permit fee and permitting time.

#### Local Government:

While local governments are eligible for the General Permit for Freestanding Moorings, they generally do not request such permits. These amendments therefore are not expected to have fiscal impacts on local governments. However, local governments may propose a bird nesting pole in the future in which case they may also benefit from the decrease in permit fee and the permitting time savings.

#### Division of Coastal Management (DCM):

It is estimated that DCM will see additional fee revenue of \$50 per year from the proposed rule amendments. Assuming an annual increase in permit fees of \$50, the 10-year present value of the benefits of the proposed rule change to DCM is approximately \$351 using a 7% discount rate. DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to review applications for bird nesting poles under the more rigorous Major Permit process.

### **Cost/Benefits Summary**

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#### Private Property Owners:

The proposed amended rules for the construction of Free Standing Moorings and Bird Nesting Poles would apply to private riparian property owners. Over the past 10 years, the Division of Coastal Management has reviewed an average of one bird nesting pole permit per year. Expansion of the General Permit is anticipated to result in a shorter application process and a faster review of future projects.

The economic impacts of these proposed rule changes are potential financial benefits to private riparian property owners in terms of both time and fees. Presently, a CAMA Major Permit is required for bird nesting poles and applicants must pay a fee of \$250 for the Major Permit. The

adoption of this rule language would allow the applicant to pay a fee of \$200 for the General Permit for this activity resulting in a \$50 savings. Applicants will also save the cost of design drawings (up to \$1,000) that often accompany a Major Permit application resulting in a total savings of \$1,050 per year. Project applicants will also realize a time savings as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75 days under the Major Permit process. In addition, state and federal agencies will realize a time savings by not having to review these projects under the Major Permit process thereby devoting more time to other project reviews. The impact is not expected to be substantial.

## APPENDIX A

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

*History Note:* Authority G.S. 113A-107; 113A-118.1;  
Eff. February 1, 1996;  
Amended Eff. April 1, 2003.

#### **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) evidence confirmation 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 Division of Coastal Management shall review all the permitting issues raised by the comments and determine, are worthy of more detailed review; 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.

*History Note:* Authority G.S. 113A-107; 113A-118.1;  
Eff. February 1, 1996;  
Amended Eff. August 1, 2007.

#### **07H .2203 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;



Eff. February 1, 1996;  
Amended Eff. September 1, 2006; August 1, 2000.

#### 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 7J.

(e)(f) Development carried out under this permit ~~must~~ shall 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

History Note: Authority G.S. 113A-107; 113A-118.1;  
Eff. February 1, 1996.

#### 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~~ shall meet US Army Corps of Engineers guidelines.

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

(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 this rule~~ 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 ~~permit, a Certificate of Exemption or any combination of the two~~ may ~~shall~~ not exceed ~~two~~ four 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 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 utility cable/pipe crossing areas or in a manner which that 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 shall bear the owner's name, vessel State registration numbers or U.S. Customs Documentation numbers. Required identification must shall be legible for the life of the mooring(s).

~~(j)(m)~~ The type of material used to anchor a proposed mooring buoy(s) must shall 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)~~ Mooring buoys authorized by this General permit must shall 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.

*History Note: Authority G.S. 113A-107; 113A-118.1;  
Eff. February 1, 1996.*