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**CRC-16-43**

November 14, 2016

## **MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Jonathan Howell

**SUBJECT:** Proposed Amendments to 7H .2200 General Permit for Freestanding Moorings

15A NCAC 07H .2200 is the General Permit for Freestanding Moorings in Estuarine Waters. Presently, this permit allows up to four freestanding moorings to be placed up to 1/3 the width of the waterbody.

Since this rule was last updated, the Division has 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 change 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 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 General Permit the CRC presently offers. Due to this circumstance, applicants have been required to obtain a CAMA Major Permit for this activity.

Staff is recommending approval of the amendments as they will make the general permit for moorings consistent with requirements for docks and piers. The amendments will also 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.

## SECTION .2200 - GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS 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.

*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 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 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 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 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 docking facility location is equal to or greater than two feet of water at normal low water level or normal water level; and

(2) The pier and docking facility 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 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)~~ Mooring 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.

~~(n)~~~~(o)~~ 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.*