



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC 20-04

January 30, 2020

MEMORANDUM

TO: Coastal Resources Commission

FROM: Jonathan Howell, DCM Major Permits Coordinator

SUBJECT: Shellfish Lease Issues Update

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 was due to the expanding shellfish aquaculture industry in North Carolina and the increasing demand for shellfish water column leases with associated gear. 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 2016, DCM has been reviewing shellfish leases and providing comments to DMF for almost three 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; for example, those including pilings greater than 4" in diameter, floating structures other than aquaculture gear, or land-based utilities. Only one CAMA major permit application has been reviewed for a shellfish lease since 2016. In this example, the applicant requested to use large pilings to mark the corners of the shellfish lease. The permit was issued without objection from any resource agencies. However, DCM staff is noticing 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 these requests (floating upwellers, pilings, Lentz System, etc.) through the CAMA Major Permit process, but CRC Rules lack specific use standards that apply to this type of development.



DCM began to discuss ways to formalize the division's role in reviewing leases, and which activities might be suitable for CAMA permit exemptions through CRC rulemaking. Staff also attended several meetings with the NC Coastal Federation, DMF, several shellfish growers, and other regulatory agencies to receive feedback on draft policies. The results were presented at the April and November 2019 CRC meetings. Staff presented draft rule language for regulatory exemptions from CAMA permitting and draft General Permit language for consideration by the commission.

In January 2020, DCM staff met again with DMF staff to discuss how best to address the DCM's and the CRC's interests and concerns related to shellfish leases. DMF staff discussed several regulatory and statutory changes that DMF will be pursuing in the coming year related to the shellfish leasing process, as part of a study on user conflicts that was completed in December 2019 and mandated by the General Assembly through S.L. 2019-37. The General Assembly required DMF and the Marine Fisheries Commission (MFC) to complete rulemaking by March of 2021 consistent with the findings of the user conflict study to help reduce user conflicts. Because most of the "rules" associated with shellfish leasing in North Carolina are actually governed by state statutes (see N.C.G.S. §113-201 and -202), DMF will also seek some statutory changes. DMF staff indicated that this rule revision initiative will first be presented to the MFC at their upcoming meeting in New Bern (Feb. 19-21).

Proposed rule changes identified by DMF are still subject to approval from the MFC but currently include:

- 1) an increased "buffer" between proposed shellfish lease boundaries and developed shorelines (from 100 to 200 feet);
- 2) a new 250 foot buffer between adjacent shellfish leases;
- 3) strengthened training requirements for new shellfish lease holders, and potential annual training for existing shellfish lease holders;
- 4) a maximum of 8 "corner markers" using pilings between 4"-12" in diameter;
- 5) requirements for reflective markers or lights on each corner marker;
- 6) rule language authorizing the DMF director to consider the cumulative impacts of multiple shellfish leases in close proximity;
- 7) increased requirements for public notice, including posting real time information on all shellfish lease applications and current shellfish leases on DMF's website, in addition to the currently required two newspaper notices and placard posting on site; and
- 8) a requirement that any leases not meeting these standards apply for a CAMA/Dredge and Fill permit as part of the formal shellfish lease review process.

DMF staff agreed to share draft rule language for your consideration at the April 2020 CRC meeting, following their discussion with the MFC in February.

As the State continues to encourage commercial cultivation of shellfish in coastal waters, DCM continues to seek guidance from the CRC on how to best manage this emerging industry in partnership with DMF and the MFC.



DCM presents the following recommendations for consideration by the Commission at your February 2020 meeting:

- 1) Delay formal CRC action on the draft General Permit rule until after the April 2020 meeting in order to review the specific rule language proposed by DMF, and initial feedback from the MFC's February 2020 meeting;
- 2) Consider moving forward with a 15A NCAC 07K rule exemption for shellfish bottom leases that:
 - a. involve only shell (cultch) placement,
 - b. do not involve cages or other water column gear, and
 - c. include no more than 8 boundary markers less than 4" in diameter; and
- 3) Consider moving forward with modifications to 15A NCAC 07M policies related to floating structures, so that floating upweller systems can be maintained at private docks.

I will be joined by DMF Director Steve Murphey at your February meeting for presentations and discussion of this material.

