



NORTH CAROLINA
Environmental Quality

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Governor

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CRC-20-07

January 31, 2020

MEMORANDUM

TO: Coastal Resources Commission

FROM: Jonathan Howell

SUBJECT: Amendments to Floating Structure Policy

Over the past several meetings, the Commission has been briefed on the Division's involvement in the review of proposed shellfish aquaculture leases, public trust and CAMA jurisdictional issues, and coordination with the Division of Marine Fisheries on possible rulemaking to address those issues.

At the November 2019 meeting, staff relayed to the Commission that in the review of proposed shellfish lease applications, the Division is seeing an increase in requests that incorporate structural components that may require a CAMA permit, including pilings to anchor gear, new growing systems, platforms to work and floating upweller systems. Staff is also seeing requests for enclosed floating structures associated with processing, which may be inconsistent with your floating structures policy at 15A NCAC 07M .0600. In the interim, the Division is prepared to review these proposed structures through the Major Permit process (floating upwellers, pilings, Lentz System, etc.), however the outcome of these requests is unclear in the absence of specific use standards.

The impetus for the Floating Structure Policy originated with a proposal in the early 1980s to construct a floating home community in New Hanover County. The local government approached the Division and Commission for assistance due to their inability to regulate such structures in county waters. During 1982 and 1983 the Commission discussed the limitations of state and local authorities to regulate this type of development as well as the impacts of allowing these structures to proliferate unregulated. The discussion centered on health and safety concerns related to these structures, particularly from sewage disposal. The Commission also discussed public trust rights and how the siting of these structures may be inconsistent with the Commission's standards since they would be considered a non-water dependent use.

In crafting the Floating Structures policy, the Commission's intention was to protect public trust rights and water quality. Originally, the Commission intended to prohibit these structures from all state waters, but during discussions with floating home/house boat manufactures and marina



operators, the Commission made provisions for these structures to be located in permitted marinas. The policy (attached) was adopted in 1983 and has not been changed since the original rule adoption. The provisions include the definition of a boat, a statement that a floating structure is not a boat, that it is intended to be used for human habitation or commerce, that it is considered a floating structure if it is used for habitation or commercial purposes in any one location for more than 30 days, and that a boat will be considered a floating structures if it's means of propulsion are removed or made inoperable and it contains at least 200 square feet of living space and it conforms with local regulations for on-shore sewage disposal.

The policy was used in several enforcement cases over the intervening years, but problems were encountered in that the policy was not consistent with the definition of development. In cases where no pilings, excavation or filling was involved, it was difficult to meet the CAMA definition of development. This prompted the Division in 1993 to request and the General Assembly agreed to incorporate the floating structure definition into the CAMA definition of development, making it a regulated activity.

After 1993, the Division successfully pursued enforcement of the policy more aggressively, particularly in cases where owners attempted to circumvent the policy by arguing that the structure met the definition of a boat by adding propulsion of sorts and registering the structure with the Wildlife Resources Commission. Over the years, several structures have been removed from state waters such as trailers on barges, mobile duck blinds and processing facilities associated with shellfish leases.

With the rapid expansion of the commercial cultivation of shellfish, DCM is again faced with issues associated with floating structures and in particular, floating upweller systems (FLUPSYs). In addition to the original health and safety concerns expressed in 1983, there are also issues such as shading, grounding, permanent moorings, riparian property rights and aesthetics. To date, the Division has managed the issue by requiring FLUPSYs to be located in a permitted marina, associated with a docking facility, and more recently, within the confines of a shellfish lease. Since legislation has been enacted to allow the location of FLUPSYs in waters otherwise closed to shellfishing, the Division anticipates that fewer shellfish growers will want to install FLUPSYs in open water leases, since the operation requires frequent maintenance and benefits from shore-based water and electrical hookups. However, to avoid inconsistencies with the Floating Structure Policy, Staff would like the Commission to consider incorporating FLUPSYs into the policy provided that they are sited in a permitted marina or associated with a private docking facility when subject to the platform area limitations that apply to private docking facilities elsewhere in your rules. Staff is cognizant that the declaration of 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 emerging industry can accommodate these structures in this fashion while limiting public trust impacts.

I look forward to discussing the Floating Structure Policy and it relationship to shellfish cultivation at our upcoming meeting in Beaufort. We will also hear from the NC Coastal

Federation about increased interest in floating processing facilities for shellfish leases, and potential interactions with the 7M Floating Structures Policy.

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.

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.