



NORTH CAROLINA  
Environmental Quality

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## MEMORANDUM

**TO:** Coastal Resources Commission  
**FROM:** Mike Lopazanski  
**SUBJECT:** Proposed Concepts for Floating Structures Associated with Shellfish Leases

At the June 2021 meeting of the Commission, you heard a presentation from the NC Coastal Federation (NCCF) regarding the increased interest in floating processing facilities for shellfish leases, and DCM Staff's concerns with potential interactions with the 15A NCAC 7M Floating Structure Policies.

You will recall that the NCCF advocated that shellfish growers need to site floating structures on leases due to growers not owning waterfront property; the cost of waterfront land in prime growing areas; shellfish sanitation requirements for product shading; workspace needed for gear cleaning/pressure washing/drying; grading and bagging; and packaging shellfish for market. Additionally, the NCCF recently outlined needs of growers for decking around the structure, generators to power equipment such as sorters, air conditioning, water pumps, and battery chargers, and the need for permanent moorings and a minimum structure size of 15' by 30'.

At the Commission's direction, DCM Staff, assisted by Division of Marine Fisheries Staff, contacted other states to gain insights on the use of floating structures on shellfish leases, including regulatory requirements and general issues or management concerns. Staff contacted programs in Maine, Rhode Island, Massachusetts, New York, New Jersey, Maryland, Virginia, South Carolina, Georgia and Florida. Six of these states (ME, MA, NY, NJ, MD, and VA) allow floating structures, but only a few have been permitted. New York and Maryland require individual permits through the coastal program and the USACE, and local governments regulate structures in MA. Four states (RI, SC, GA and FL) do not allow floating structures.

Concerns expressed by the states contacted included:

- Public trust impacts
- Navigation impacts
- Food and Drug Administration issues
- Bird roosting issues
- Restroom facilities
- Other user conflicts



At this time, it appears that few states have specific requirements or standards for floating structures associated with aquaculture leases. Requirements that do exist include:

- Coastal Program permit
- Army Corps of Engineers permit
- Adjacent property owner consent
- Bonds for removal of derelict/abandoned/destroyed structures
- Time limited permit (e.g., 5 years)
- No overnight use
- Time limits on-site (< 24 hrs)
- Use limits (culling, defouling)
- Restroom facilities required
- Bird mitigation plan
- Lighted navigation aids (US Coast Guard permit)
- Wet storage only (no culling or sorting)

From DCM Staff's perspective, the experiences other states have had with managing floating structures on shellfish leases have been somewhat limited, with several just beginning to address open water column leases and the associated floating gear. Gear and structure-intensive aquaculture in other states has not been without controversy, with most vocal groups being waterfront property owners concerned about viewshed and interference with other public trust uses including navigation and fishing. As stated in previous memos and presentations, the management strategy for any water dependent structure incorporates balancing many interests and concerns, including public trust rights, navigation, potential resource impacts (e.g., shading or grounding), use of permanent moorings, riparian property rights, and aesthetics.

When it concerns floating structures in open waters, the Commission and Division have been consistent in having these structures removed from state waters or located within a permitted marina in compliance with CRC rules. With rapid expansion and growth in the commercial cultivation of shellfish, the state has seen local lawsuits and legislative moratoria for specific waterbodies related to these activities. Given these continuing issues, Staff believes the Commission should move cautiously in considering allowing floating structures in open waters. However, should the Commission wish to move forward in the development of rule language, Staff suggest the following concepts be incorporated in any regulatory strategy:

- 1) Given that this is a new/growing industry, Staff recommend that permits for any floating structures be time-limited (five years) in order to reassess and address any unforeseen issues that may develop.
- 2) A USCG-approved Type III Marine Sanitation Device (holding tank) should be required. The Commission's Floating Structures Policies focused on health and safety concerns related to sewage disposal. As these structures would be associated with shellfish harvesting, this remains a primary concern. Additionally, federal/state workplace rules may come into play that would require restroom facilities.

- 3) Structures should not be designed to be habitable, and overnight use should be prohibited.
- 4) Permanent moorings should not be allowed. Commission rules currently limit freestanding moorings for the exclusive use of riparian property owners.
- 5) Notification of riparian property owners should be required for floating structures. At present, proposed shellfish leases require notification of adjacent riparian property owners within 100 feet of a proposed lease; however, DMF is proposing to change this requirement to 250 feet. A similar notification requirement should be included for floating structures.
- 6) The Commission has several rules regulating floating platforms, requiring that they not rest on the bottom and not exceed 400 square feet. Boathouses are also limited to 400 square feet. Staff recommends incorporating these standards and limiting structures to 400 square feet and single-story use.
- 7) Bird deterrents / mitigation should be required. According to information obtained from other states, these sites can become roosting sites for birds, potentially leading to concentrated fecal contamination of the waters and shellfish.
- 8) Staff recommends incorporating an identification standard for these floating structures to link them to owners should they become unmoored, damaged or abandoned. The Division has recently been involved in a significant effort to address marine debris and abandoned vessels both due to storms and owner-related issues. While the Commission does not have authority to require bonds associated with development, DMF requires applicants to sign, within their application, a shellfish lease cleanup provision so that shellfish growers are responsible for retrieval of derelict gear.

I look forward to continuing this discussion at our upcoming September meeting.

## OTHER STATES POLICIES FOR FLOATING STRUCTURES AND SHELLFISH LEASES

### Maine

- Floating structures allowed on some leases.
- Marine Sanitation Device (MSD) required.
- Bird roosting mitigation plan required.

### Rhode Island

- Floating platforms or barges are prohibited on leases.

### Massachusetts

- Floating structures/platforms allowed.
- Regulated by local governments.
- Marine Sanitation Device required.
- Working on bird roosting mitigation plan requirement.

### New York

- Floating structures allowed.
- Two floating structures permitted, but never deployed.
- Require bird roosting mitigation plan.
- USACE permit required.
- USCG “private aid to navigation” permit (lighted navigation aid) required
- Local govt approval required.

### New Jersey

- Floating structures allowed but none have been permitted.
- Individual Coastal Program permit required (complicated/lengthy process).

### Maryland

- Floating structures/platforms allowed.
- Coastal Program permit required.
- USACE permit required.
- Few permitted.

### Virginia

- Floating structures allowed for 5-year period.
- Only one permitted and later abandoned.
- Adjacent property owner consent required.

- Bond required.
- Use limited to washing and sorting cages.

### South Carolina

- Floating structures possible. None deployed.
- Floating docks permitted (two).
- Use limited to wet storage, no sorting/culling.

### Georgia

- Floating structures not allowed.
- Just beginning to issue water column leases.

### Florida

- Platforms & mooring of vessels prohibited for more than 24 hours
- Floating structures are not allowed