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NORTH CAROLINA
Environmental Quality

CRC-21-37

October 27, 2021

MEMORANDUM

TO: Coastal Resources Commission

FROM: Daniel Govoni

SUBJECT: Proposed Amendments to 15A NCAC 7M .0600 and 7H .0208 – Floating Structures Associated with Shellfish Lease

The Commission has had several discussions related to shellfish aquaculture leases and the Division's role, most recently regarding the interest among shellfish growers and industry supporters in allowing floating structure facilities within shellfish leases. Needs cited for these structures include product shading and providing workspace for gear cleaning, pressure washing, grading/bagging, and packaging shellfish for market. At your September 2021 meeting, staff reviewed your floating structure policies and how other states are regulating floating structures associated with shellfish leases, as well as general issues and management concerns. At the September meeting, the Commission requested staff to move forward with proposed amendments to allow floating structures within a Division of Marine Fisheries (DMF) authorized shellfish lease.

Staff met with DMF Habitat Enhancement and Shellfish Sanitation staff to discuss how best to approach rule amendments that would allow these structures and satisfy concerns that DMF/DCM may have, as well as the roles and responsibilities of each Division. Additionally, staff reached out to the US Army Corps of Engineers (Corps) to discuss their regulatory requirements associated with Nationwide Permit #48, which allows DMF to authorize shellfish leases with floating bags, cages and platforms without a case-by-case permit review by the Corps. Based on initial communications with the Corps, the NWP #48 does not allow floating structures to be enclosed and would therefore require a separate Corps authorization.

In addition to proposed amendments to 15A NCAC 07M .0603 Policy Statements, staff has also drafted amendments to the Use Standards for the Estuarine System 15A NCAC 7H .0208, creating a new subsection 7H .0208(b)(14). This proposed rule language includes siting criteria, anchoring, marine sanitation devices, dimensions, and uses which were discussed at the previous Commission meeting; however, staff is still waiting for additional comments from DMF and the Division of Water Resources (DWR) and more detailed comments from the USACE regarding their roles and concerns, which may result in additional changes to these draft amendments.



I hope to have additional comments from DMF, DWR and the USACE in time for the meeting, and look forward to discussing these amendments in more detail.

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.

(c) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purposes of this rule, floating upweller systems are considered floating structures.

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~~ marinas, or within active shellfish cultivation leases and shellfish franchises authorized by the Division of Marine Fisheries.

(b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

(c) Floating upweller systems may be permitted only at private docking facilities in accordance with 15A NCAC 7H .0208(b)(6), and at permitted marinas in accordance with 15A NCAC 7H .0208(b)(5).

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8);

15A NCAC 07H .0208 USE STANDARDS

(b) Specific Use Standards

(14) Floating Structures. A floating structure as defined in 15A NCAC 07M .0602 may be permitted in public trust waters provided that the floating structure is associated with an active shellfish cultivation lease or shellfish franchise authorized by the Division of Marine Fisheries.

(A) A floating structure may be permitted under the following conditions :

(i) There shall be no blockage of navigation or use of the waters by the public by the existence of a floating structure.

(ii) Floating structures shall not be sited over shellfish beds, or over submerged aquatic vegetation. Floating structures in Primary Nursery Areas shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level.

(iii) The total square footage of shaded impact for floating structures shall not exceed 450 square feet.

(iv) Floating structures shall not be attached to pilings or other permanent moorings.

(v) Floating Structures shall be single story. They may be roofed but shall not allow second story use.

(vi) Floating structures shall not be used for habitation.

(vii) As required by the Division of Marine Fisheries, an approved marine sanitation device, portable toilet or other approved sewage disposal receptacle shall be provided and used for the purpose of containing human sewage and bodily fluids. No sewage, whether treated or untreated, shall be discharged from any floating structure.

(viii) Floating structures shall meet all requirements required by the Division of Marine Fisheries to mitigate or deter potential pollution impacts of bird and mammal waste.

(ix) Floating structures shall not cause a permanent closure of shellfish waters.

(x) No more than one floating structure shall be allowed within a shellfish lease or franchise.

(xi) Floating structures shall be removed by the owner upon relinquishment or cancellation of the shellfish lease or franchise.