



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-19-15

July 1, 2019

MEMORANDUM

TO: Coastal Resources Commission

FROM: Kevin Hart

SUBJECT: Proposed Rule changes for 15A NCAC 07H.1900 General Permit to Allow Temporary Structures Within Coastal Shorelines and Ocean Hazard AECs

The Division of Coastal Management (DCM) has been in discussions with the scientific research community regarding when proposed research projects may need a CAMA permit. Over the past few years, the Division has seen more research projects involving structures in the water and CRC rules currently do not specifically acknowledge research or structures associated with research, regardless of scale. Since there is no General Permit available for the types of “development” activities typically associated with scientific research, DCM has historically requested the scientific research project applications be processed through the CAMA Major Permit process. This has resulted in problems for time-sensitive grant funding, delays and confusion among the research community. The development of General Permit rule language specific to research projects is the result of collaboration between DCM and the research community and is intended to provide regulatory flexibility to accommodate scientific research needs.

The Coastal Resources Commission voted at the February 2019 meeting to begin the rulemaking process to modify NCAC 07H.1900 to include language and specific conditions related to research projects as requested by the research community and DCM staff.

The fiscal impacts of this proposed rule change (attached) are benefits to universities and state/federal resource agencies including the Division of Marine Fisheries (DMF) and Wildlife Resources Commission (WRC)) in terms of both time and fees. The adoption of this rule language would allow the applicant to pay a fee of \$200 (\$50 savings) for the General Permit, and would result in time savings for applicants as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75-150 days under the Major Permit process.



It is estimated that DCM will see reduced fee revenue of \$50 per year from the proposed rule amendments, but this loss will be offset by staff time savings. DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to review applications for research structures under the more rigorous Major Permit process.

While private property owners, local governments, and DOT are eligible for the General Permit for Temporary Structures, requests for such permits are infrequent, averaging one or two requests per year, so the fiscal impact is expected to be negligible to these parties.

DCM does not anticipate significant economic impacts as a result of this proposed rule change. The proposed amendment decreases the permit cost by \$50 while reducing the review time by DCM staff. These amendments will have no impact on Department of Transportation projects, local governments or the federal government.

The fiscal analysis has been approved by the Department and is currently being reviewed by OSBM and based on preliminary review, no significant changes are expected. Staff recommends approving the analysis conditioned on there being no major changes requested by OSBM. At your upcoming meeting in Beaufort, I will update the commission on the status with OSBM and will be prepared to discuss the analysis with you.

Fiscal Analysis

15A NCAC 7H .1900 General Permit to Allow for Temporary Structures Within Coastal Shorelines and Ocean Hazard AECs

Prepared by

Kevin Hart
NC Division of Coastal Management
(252) 948-3936

July 1, 2019

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Citations and Titles	15A NCAC 7H .1901 – Purpose 15A NCAC 7H .1902 – Approval Procedures 15A NCAC 7H .1904 – General Conditions 15A NCAC 7H .1905 – Specific Conditions
Description of the Proposed Rules	Section 7H .1900 defines specific development requirements for the construction of temporary structures in the Estuarine and Ocean System Area of Environmental Concern (AEC). The proposed rule change amends language in Rules 7H .1901, 7H .1902, 7H .1904 and 7H .1905 to make the General Permit consistent with other rules related to General Permits for structures as well as incorporates language for the permitting of research structures as temporary structures within the Estuarine and Ocean System. This would also change the title of Section 7H.1900 to reflect the Rule changes in this Section.
Agency Contact	Kevin Hart Environmental Specialist, Washington Regional Office Kevin.Hart@ncdenr.gov (252) 948-3936
Authority	113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules to expand this General Permit to include temporary research structures within the Estuarine and Public Trust Waters, as well as minor changes to conform with other General Permits.
Impact Summary	State government: Yes Local government: No Federal government: No NC DOT: No Private entities: Yes Substantial impact: No

Summary

In 1989, the Coastal Resources Commission (CRC) adopted Coastal Area Management Act (CAMA) General Permit 15A NCAC 7H .1900 for the construction of temporary structures associated with fishing tournaments, boat races, and the movie industry in the Coastal Shoreline and Ocean Hazard Areas of Environmental Concern (AEC).

On occasion, the Division of Coastal Management (DCM) has been approached with requests for permits to construct temporary structures associated with research projects within Public Trust and Estuarine Waters. Although the permitting of a temporary structure for this type of activity is not considered major development, this type of development does not fall within the parameters of any existing General Permit. Without an applicable General Permit, applicants have been required to obtain a CAMA Major Permit that involves a lengthier process (75-150 days) and a higher application fee (\$250). This proposed rule amendment will alleviate the issue of requiring a Major Permit for some small-scale research projects and provide conditions for the placement of temporary structures in Public Trust and Estuarine Waters.

The fiscal impacts of this proposed rule change are benefits to universities and state/federal resource agencies Division of Marine Fisheries (DMF) and Wildlife Resources Commission (WRC)) in terms of both time and fees. The adoption of this rule language would allow the applicant to pay a fee of \$200 (\$50 savings) for the General Permit as well as a time savings for applicants as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75-150 days under the Major Permit process.

It is estimated that DCM will see reduced fee revenue of \$50 per year from the proposed rule amendments but this loss will be offset by staff time savings. DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to review applications for research structures under the more rigorous Major Permit process. State agencies may propose a temporary structure in which case they may also benefit from the decrease in permit fee and the permit review time savings should they apply for such a permit.

The proposed rule changes will provide more flexibility to applicants constructing temporary structures. These changes will allow these structures to be constructed in Estuarine Waters and Public Trust Areas, expand the timeframe to one year, and allow these structures to be built in Primary Nursery Areas with approval from DMF and WRC. Proposed rule changes will also include naming a responsible party for research projects, prohibit interference with public trust uses, prohibit dune disturbance and excavation and reducing the cumulative size of these projects to 100 square meters. Changes in these rules are being proposed to be consistent with other General Permits.

While private property owners, local governments, and DOT are eligible for the General Permit for Temporary Structures, requests for such permits are infrequent, averaging one or two requests per year, so the fiscal impact is expected to be negligible to these parties.

Description of Rule Amendment

15A NCAC 7H .1901 includes the purpose of the General Permit which is to allow the construction of temporary structures within the estuarine and ocean systems broadening the eligible locations this General Permit is applicable. These amendments will allow structures to be constructed within the Estuarine Waters and Public Trust Areas of Environmental Concern.

15A NCAC 7H .1902 outlines approval procedures of the General Permit. Amendments to this rule include updating standard language to detail at which point a General Permit may be elevated to a Major Permit when comments have been received from adjacent property owners objecting to the proposed project. Additional amendments will increase the time structures can remain in place up to a maximum of one year to accommodate research projects spanning multiple seasons.

15A NCAC 7H .1904 outlines General Conditions of the General Permit. Amendments to this rule are limited to amending language to be consistent with other General Permits to construct structures and adding language to prohibit excavation activity below Normal Water Level or Normal High Water.

15A NCAC 7H. 1905 outlines Specific Conditions of the General Permit. Amendments to this rule include updating standard language to be consistent with other General Permits, coordination with the North Carolina Division of Marine Fisheries and Wildlife Resources Commission and incorporating language to avoid impacts to navigation and other public trust uses. Additional language has been included to reduce the size of the structures from one acre to 100 square meters in size. Proposed changes also prohibit any disturbance of dunes, disallow structures in Primary Nursery Areas without approval from the Division of Marine Fisheries and Wildlife Resources Commission, and remove the prohibition against constructing sewage disposal systems

Based on these proposed rule amendments the title of Section .1900 is also amended to reflect these changes.

Impact Analysis

Private Entities:

Permit Applicants

The fiscal impact of the proposed rule changes are potential financial benefits to private entities in terms of both time and fees. While a CAMA General Permit is required for Temporary Structures there is a discrepancy in the language regarding where these structures are allowed. These amendments will allow temporary structures to be placed both in the water and on land associated with these AECs. The amendments also expand the General Permit for use by academic institutions as well as state and federal agencies. Presently, a CAMA Major Permit is required for temporary structures associated with research projects within Public Trust and Estuarine Waters and applicants must pay a fee of \$250 for the Major Permit. The adoption of this rule language would allow the applicant to pay a fee of \$200 for the General Permit for this activity resulting in a \$50 savings. The General Permit can also be issued in a matter of days as opposed to the Major Permit with a 75-150 review period. This will result in a time savings to applicants.

Changes to project criteria

The adoption of this rule language would assist in the management of research projects within Areas of Environmental Concern and provide regulatory flexibility to accommodate environmental research projects. The proposed amendments include:

- Allowing temporary structures within Estuarine Waters and Public Trust Areas.
- Prohibiting excavation and fill for temporary structures.
- Prohibiting dune disturbance.
- Allowing temporary structures in Primary Nursery Areas with North Carolina Division of Marine Fisheries and Wildlife Resources Commission consent.
- Identifying a specific party responsible for research projects.
- Increasing the permit timeframe to one year from 180 days.
- Including conditions to not impede existing public trust uses.
- Reducing the overall size limit from 1 acre to a cumulative size limit of 100 square meters.
- Modifying language to be consistent with other general permits.

General Public

General Permit 15A NCAC 7H .1900 was originally adopted to accommodate fishing tournaments, boat races, and the movie industry in the Coastal Shoreline and Ocean Hazard Areas of Environmental Concern (AEC). Since there is no General Permit available for the types of activities typically associated with scientific research, DCM has historically requested the academic research project applications be processed through the CAMA Major Permit process. This has resulted in problems for time-sensitive grant funding, delays and confusion among the research community. The development of General Permit rule language specific to research projects is the result of collaboration between DCM and the research community. Rather than incorporating the proposed rule language into a new permit, it is recommended to incorporate research projects into the existing GP 07H.1900 General Permit To Allow For Temporary Structures Within The Estuarine Shoreline and Ocean Systems AECs. The adoption of this rule language would assist in the management of research projects within Areas of Environmental Concern and provide regulatory flexibility to accommodate environmental research projects.

NC Department of Transportation (NC DOT):

While NC DOT is eligible for the General Permit for Temporary Structures, NC DOT generally does not request such permits and therefore pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .1901, 7H .1902, 7H .1904, 7H .1905 and Section 7H.1900 will not affect environmental permitting for the NC DOT. However, NC DOT may propose a temporary structure for a NCDOT project in the future and if so, may realize a benefit from the decrease in permit fee (\$50 savings) and reduced permit review period.

Local Government:

While local governments are eligible for the General Permit for Temporary Structures, they generally do not request such permits. However, local governments may propose a temporary structure in the future and if so, may realize a benefit from the decrease in permit fee (\$50 savings) and reduced permit review period.

State Government:

The fiscal impact of the proposed rule changes are potential financial benefits to State agencies in terms of both time and fees. Presently, a CAMA Major Permit is required for temporary structures within Public Trust and Estuarine Waters and applicants must pay a fee of \$250 for the Major Permit. The adoption of this rule language would allow the applicant to pay a fee of \$200 for the General Permit for this activity resulting in a \$50 savings in addition to a time savings from a reduce permit review period.

Federal Government

Activities within the state's coastal zone that are a federal activity require a Consistency Determination. The proposed rule changes will not change this process; the federal government will continue to apply for a Federal Consistency Determination and not be affected by these amendments. However, should a federal agency choose to seek a permit, they will benefit from a reduced permit fee (\$50 savings) and a time savings from a reduced permit review period.

Division of Coastal Management (DCM):

DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to review applications for Temporary structures under the more rigorous Major Permit process. This staff time savings is likely to offset the expected reduction in permit fees of \$50 per year.

APPENDIX A

SECTION .1900 – GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN COASTAL SHORELINES, THE ESTUARINE AND OCEAN HAZARD SYSTEMS AECS

15A NCAC 07H .1901 PURPOSE

A permit under this Section shall allow for the placement of temporary structures within the estuarine and public trust shorelines and ocean hazard systems AECS according to the provisions provided in Subchapter 7J .1100 and according to the rules in this Section.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. August 1, 2000.

15A NCAC 07H .1902 APPROVAL PROCEDURES

(a) The applicant must shall contact the Division of Coastal Management at the address provided in 15A NCAC 07A .0101 and complete an application and complete a general permit application form requesting approval for development. Applicants shall provide information on site location, dimensions of the project area, proposed activity, name, address, and telephone number. For temporary structures associated with scientific research, permit applicants shall be lead investigators on behalf of accredited educational institutions, or state or federal agencies.

(b) ~~The~~ If a temporary structure is to be located less than 400 feet waterward of normal high water or normal water level, or within the established pier head line as determined by the Division of Coastal Management, the applicant must provide:

- (1) ~~confirmation that~~ a written statement ~~has been obtained~~ signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should 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 ten days of receipt of the notice, ~~and, and~~ indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. ~~If DCM staff finds that the comments are worthy of more in depth review, the applicant will be notified that he must submit an application for a major development permit. If DCM determines that the project exceeds the conditions established by this General Permit, DCM shall notify the applicant that a Major Permit application shall be required.~~

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the site of construction of the proposed development. ~~Written authorization to proceed with the proposed development may be issued by the Division during this visit.~~ Temporary structures authorized by this General Permit may remain in place for a maximum of one year from the date of issuance. The project site shall be restored to pre-development conditions and all ~~All work must~~ structures shall be ~~completed and the structure removed within 180 days following the day written authorization is issued.~~ one year of permit issuance, or by the date specified with the General Permit.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. January 1, 1990.

15A NCAC 07H .1903 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the Department.

History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1;
Eff. March 1, 1989;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991.

15A NCAC 07H .1904 GENERAL CONDITIONS

- (a) Temporary structures for the purpose of this general permit are those which are constructed or installed within the ocean hazard or estuarine and ocean system AECs and because of dimensions or functions do not meet the criteria of the existing general permits (i.e. are not a bulkhead, pier, rip rap, groin, etc.); cannot be authorized by another General Permit within this Subchapter.
- (b) There shall be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC except for the placement of auxiliary structures such as signs, fences, posts, pilings, etc. or pilings.
- (c) There shall be no fill or excavation activity below the plane of mean normal high water or normal water level associated with the structure.
- (d) This permit will shall not be applicable to proposed construction development where the Department Division of Coastal Management has determined, based on an initial a review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.
- (e) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources Environmental Quality to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (f) This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by regulations adopted by any federal, state, or local agency.
- (g) Development carried out under this permit must shall be consistent with all local requirements, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. May 1, 1990; March 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994.

15A NCAC 07H .1905 SPECIFIC CONDITIONS

Proposed temporary structures must shall meet each of the following specific conditions to be eligible for authorization by the general permit:

- (1)(a) All aspects of the structure shall be removed and the site returned to pre-project conditions at the termination expiration of this general permit.
- (2)(b) There shall be no work within any productive shellfish beds: beds without authorization from the Division of Marine Fisheries.
- (3)(c) The proposed project structure shall not involve the disturbance of any marsh, submerged aquatic vegetation, or other wetlands including excavation and/or or filling of these areas.
- (4)(d) The proposed activity shall not involve the disruption of normal disrupt navigation and transportation channels and shall be properly marked to prevent being a hazard to navigation.
- (e) The proposed structure shall not impede public access or other public trust uses.
- (5)(f) The proposed project structure shall not serve as a habitable place of residence, be habitable.
- (6)(g) There shall be no adverse disturbance of existing dune structures, dunes.
- (7)(h) Development carried out under Temporary structures authorized by this permit shall not individually or cumulatively exceed one acre in size in accordance with 15A NCAC 2H .1002(1) and 15A NCAC 2H .1003(a)(1)-100 square meters in size.
- (8)(i) No sewage disposal system will be allowed without a permit authorized by either the Division of Environmental Health or the Division of Environmental Management. Structures shall not be constructed in a designated Primary Nursery Area without approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;