

1 15A NCAC 07H .2201 is amended as published in 31:24 NCR 2478-2479 as follows:

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3 SECTION .2200 – GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND  
4 BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN  
5 HAZARD AREAS

6

7 15A NCAC 07H .2201 PURPOSE

8 A general permit pursuant to this Section shall allow the construction of freestanding moorings and bird nesting poles  
9 in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and  
10 according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to  
11 waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature  
12 characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave  
13 energy, and lower erosion rates than the adjacent Ocean Erodible Area.

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15 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
16 *Eff. February 1, 1996;*  
17 *Amended Eff. January 1, 2018; April 1, 2003.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2202

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, consider adding "pursuant to Paragraph (b)." after "development" to help clarify the process*

*Line 7, replace "his/her" with "his or her"*

*Line 15, is the "days" business or calendar? Please consider clarifying*

*Lines 16, 17, and 24 uses the acronym "DCM" but lines 4, 14 thru 15, 22 thru 23, and lines 26 uses "Division of Coastal Management" Please use consistent terminology*

*Line 22, replace "can" with "may"*

*Line 24, what is meant by "General Permit process"? Is this a reference back to "the procedures provided in 15A NCAC 07J .1100"? Please clarify what is meant by "process"*

*Line 27, what is meant by "a copy of" Is it "a copy of the rules of this Section"? Please clarify*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Tuesday, November 28, 2017

1 **15A NCAC 07H .2202 is amended as published in 31:24 NCR 2479 as follows:**

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3 **15A NCAC 07H .2202 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and  
5 request approval for development.

6 (b) The applicant shall provide:

7 (1) information on site location, dimensions of the project area, and his/her name and address;

8 (2) a dated plat(s) showing existing and proposed development; and

9 (3) ~~confirmation~~ evidence that:

10 (A) a written statement has been obtained and signed by the adjacent riparian property owners  
11 indicating that they have no objections to the proposed work; or

12 (B) the adjacent riparian property owners have been notified by certified mail of the proposed  
13 work. The notice shall instruct adjacent property owners to provide any comments on the  
14 proposed development in writing for consideration by permitting officials to the Division  
15 of Coastal Management within 10 days of receipt of the notice, and, indicate that no  
16 response shall be interpreted as no objection. DCM staff shall review all comments. If  
17 DCM determines that:

18 (i) the comments are relevant to the potential impacts of the proposed project; and

19 (ii) ~~the permitting issues raised by the comments are worthy of more detailed review;~~  
20 the Division of Coastal Management shall review all comments and determine,  
21 based on their relevance to the potential impacts of the proposed project, if the  
22 proposed project can be approved by a General Permit. If the Division of Coastal  
23 Management determines that the project exceeds the guidelines established by the  
24 General Permit process, DCM shall notify the applicant that ~~he must submit~~ an  
25 application for a major development ~~permit.~~ permit shall be required.

26 (c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the  
27 applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within  
28 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue  
29 construction.

30

31 *History Note: Authority G.S. 113A-107; 113A-118.1;*

32 *Eff. February 1, 1996;*

33 *Amended Eff. January 1, 2018; August 1, 2007.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2204

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, add a comma after "structure"*

*Line 7, define or delete "specifically"*

*Line 13, should "or bird nesting poles" be after "moorings"*

*Line 15, define or delete "significantly"*

*Line 15, define or delete "unnecessarily"*

*Line 18, consider replacing "must" with "shall"*

*Line 18, is the correct term "Guidelines" or is the intent "the rules"? Please review and clarify*

*Line 19, is ".0100 et. seq" necessary or should it simply be the citation to rules in 07H? Please review and clarify*

*Line 19, add a comma after "seq."*

*Line 21, what is meant by "periodic inspections at any time deemed necessary"? What is considered periodic? How is something "deemed necessary"? What are the factors considered? Is the language necessary? Please review and clarify*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Tuesday, November 28, 2017

1 **15A NCAC 07H .2204 is amended as published in 31:24 NCR 2479 as follows:**

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3 **15A NCAC 07H .2204 GENERAL CONDITIONS**

4 (a) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a  
5 stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an  
6 existing or proposed pier, dock, or boathouse).

7 ~~(b) A "bird nesting pole" is any pole or piling erected, with a platform on top, specifically with the purpose of~~  
8 ~~attracting birds for nesting.~~

9 ~~(b)(c)~~ Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the  
10 riparian landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or  
11 any other commercial services.

12 ~~(c)(d)~~ There shall be no unreasonable interference with navigation or use of the waters by the public by the existence  
13 of freestanding moorings authorized by this permit.

14 ~~(d)(e)~~ This general permit may not be applicable to proposed construction when the Department determines that the  
15 proposal might significantly affect the quality of the human environment or unnecessarily endanger adjoining  
16 properties. In those cases, individual permit applications and review of the proposed project shall be required  
17 according to 15A NCAC 7J.

18 ~~(e)(f)~~ Development carried out under this permit must be consistent with all local requirements, AEC Guidelines in  
19 7H .0100 et. seq. and local land use plans current at the time of authorization.

20 ~~(f)(g)~~ Individuals shall allow authorized representatives of the Department of ~~Environment, Health, and Natural~~  
21 ~~Resources~~ Environmental Quality to make periodic inspections at any time deemed necessary in order to be sure that  
22 the activity being performed under the authority of this general permit is in accordance with the terms and conditions  
23 prescribed herein.

24 ~~(g) Freestanding mooring(s) shall not be transferable or assignable. Upon transfer of riparian property ownership, the~~  
25 ~~mooring(s) must be removed by the original permittee unless a new permit is issued to the new riparian owner.~~

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27 *History Note: Authority G.S. 113A-107; 113A-118.1;*

28 *Eff. February 1, 1996;*

29 *Amended Eff: January 1, 2018.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2205

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 13, replace "the rule" with "this Rule"*

*Line 20, replace "via" with "by"*

*Line 20, what is the purpose of "CAMA"? Prior rules only reference "General Permit." Please review and use consistent terms when possible.*

*Line 22, delete the term "previously"*

*Line 24, define or delete "significantly"*

*Line 28, what is meant by "Primary Nursery Area"? As line 30 references two other agencies, it is likely that this Rule needs to incorporate something in accordance with G.S. 150B-21.6 to clarify what is meant by "Primary Nursery Area." Please review and clarify*

*Lines 29 and 35, what is meant by "normal low water level"? How is this known? Please clarify.*

*Line 31, clarify where Marine Fisheries Commission is defining these concepts. It is likely that this Rule needs to incorporate something in accordance with G.S. 150B-21.6*

*Lines 34 and 36, as these items are part of a list, consider beginning the clauses with lowercase letters*

*Page 2, line 2, replace "which" with "that"*

*Page 2, lines 3 thru 5, what are the "requirements and required markings"? It is likely that this Rule needs to incorporate something in accordance with G.S. 150B-21.6*

*Page 2, line 5, delete the clause "At minimum," and capitalize "permanent"*

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Tuesday, November 28, 2017

*Page 2, lines 7, 8, 9, and 13, consider replacing “must” with “shall”*

*Page 2, line 10, define or delete “safely”*

*Page 2, line 13, why is “permit” after “General” not capitalized here, when it is capitalized in prior uses? Please review and clarify*

*Page 2, line 14, define or delete “easily”*

*Page 2, lines 20 thru 21, what is the purpose of this language? The clause “all other State and Federal permit requirements” is very broad. Could this clause be clarified to specify the “other State and Federal permit requirements”? Please clarify the statutory authority for this language or delete it.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07H .2205 is amended as published in 31:24 NCR 2479-2480 as follows:

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3 15A NCAC 07H .2205 SPECIFIC CONDITIONS

4 (a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high  
5 water line, or the normal water line, whichever is applicable.

6 (b) Freestanding moorings and bird nesting poles along federally maintained channels must meet US Army Corps of  
7 Engineers guidelines.

8 (c) Freestanding moorings in no case shall extend more than ~~1/3~~ 1/4 the width of a natural water body or man-made  
9 canal or basin.

10 (d) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel to  
11 be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall  
12 have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they  
13 intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the  
14 adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be  
15 sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the  
16 minimum setback and submit it to the Division of Coastal Management prior to initiating any development of  
17 freestanding moorings. The line of division of areas of riparian access shall be established by drawing a line along the  
18 channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it  
19 intersects with the shore at the point the upland property line meets the water's edge.

20 (e) The total number of ~~docking/mooring~~ docking or mooring facilities to be authorized via a CAMA General ~~permit,~~  
21 a Certificate of Exemption or any combination of the two may permit shall not exceed ~~four~~ two per property.

22 (f) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a previously  
23 permitted bird nesting pole shall require additional authorization from the Division of Coastal Management.

24 ~~(f)(g)~~ Freestanding moorings and bird nesting poles shall not significantly interfere with shellfish franchises or leases.  
25 Applicants for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the  
26 permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would  
27 extend.

28 (h) Freestanding moorings shall not be constructed in a designated Primary Nursery Area with less than two feet of  
29 water at normal low water level or normal water level under the General Permit set forth in this Section without prior  
30 approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

31 (i) Freestanding moorings located over shellfish beds or submerged aquatic vegetation (as defined by the Marine  
32 Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the  
33 Wildlife Resources Commission if the following two conditions are met:

34 (1) Water depth at the freestanding mooring location is equal to or greater than two feet of water at  
35 normal low water level or normal water level; and

36 (2) The freestanding mooring is located to minimize the area of submerged aquatic vegetation or  
37 shellfish beds impacted under the structure as determined by the Division of Coastal Management.



1 ~~(g)~~(j) Freestanding moorings and bird nesting poles shall not be established in submerged ~~cable/pipe utility~~ crossing  
2 areas or in a manner which interferes with the operation of an access through any bridge.

3 ~~(h)~~(k) Freestanding moorings and bird nesting poles shall be marked or colored in compliance with U.S. Coast Guard  
4 and N.C. Wildlife Resource Commission requirements and the required marking maintained for the life of the  
5 mooring(s). At minimum, permanent reflectors shall be attached to the structure in order to make it more visible during  
6 hours of darkness or inclement weather.

7 ~~(i)~~(l) Freestanding moorings must bear owner's name, vessel State registration numbers or U.S. Customs  
8 Documentation numbers. Required identification must be legible for the life of the mooring(s).

9 ~~(j)~~(m) The type of material used to anchor a proposed mooring buoy(s) must be non-polluting and of sufficient weight  
10 and design to safely anchor the buoy and vessel.

11 ~~(k) If use of any freestanding mooring authorized by this General permit is discontinued for a period of 12 months or~~  
12 ~~more, it must be removed by the permittee.~~

13 ~~(l)~~(n) Mooring buoys authorized by this General permit must be a minimum 12" in diameter or otherwise be designed  
14 to be easily recognized and not present a hazard to navigation.

15 ~~(m) Existing freestanding moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the~~  
16 ~~mooring(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s)~~  
17 ~~then must comply with those guidelines of the Division in place at that time. In any event, existing moorings must~~  
18 ~~comply with these Rules within two years.~~

19 (o) The platform located at the apex of the bird nesting pole shall not exceed 3'x 3' and shall not have sides.

20 ~~(n)~~(p) This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal  
21 permit ~~requirements~~ requirements are met prior to implementation of the project.

22  
23 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
24 *Eff. February 1, 1996;*  
25 *Amended Eff. January 1, 2018.*