

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

15A NCAC 07H .2201 PURPOSE

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

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

15A NCAC 07H .2202 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development pursuant to Paragraph (b).

(b) The applicant shall provide:

- (1) information on site location, dimensions of the project area, and applicant name and address;
- (2) a dated plat(s) showing existing and proposed development; and
- (3) evidence that:
 - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
 - (B) the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall 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 10 calendar days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. Division of Coastal Management staff shall review all comments. If the Division of Coastal Management determines that:
 - (i) the comments are relevant to the potential impacts of the proposed project; and
 - (ii) the Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project may be approved by a General Permit. If the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit process provided in 15A NCAC 7J .1100, the Division shall notify the applicant that an application for a major development permit shall be required.

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

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. February 1, 1996;
Amended Eff. January 1, 2018; August 1, 2007.*

15A NCAC 07H .2203 PERMIT FEE

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

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1;
Eff. February 1, 1996;
Amended Eff. September 1, 2006; August 1, 2000.*

15A NCAC 07H .2204 GENERAL CONDITIONS

- (a) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure, or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).
- (b) A "bird nesting pole" is any pole or piling erected, with a platform on top, for the purpose of attracting birds for nesting.

- (c) Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or any other commercial services.
- (d) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of freestanding moorings or bird nesting pole authorized by this permit.
- (e) This general permit may not be applicable to proposed construction when the Department determines that the proposal might affect the quality of the human environment or endanger adjoining properties. In those cases, individual permit applications and review of the proposed project shall be required according to 15A NCAC 7J.
- (f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local land use plans current at the time of authorization.
- (g) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.

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

15A NCAC 07H .2205 SPECIFIC CONDITIONS

- (a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high water line, or the normal water line, whichever is applicable.
- (b) Freestanding moorings and bird nesting poles along federally maintained channels must meet US Army Corps of Engineers guidelines.
- (c) Freestanding moorings in no case shall extend more than 1/4 the width of a natural water body or man-made canal or basin.
- (d) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in this Rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of freestanding moorings. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.
- (e) The total number of docking or mooring facilities to be authorized by this General Permit shall not exceed two per property.
- (f) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a permitted bird nesting pole shall require additional authorization from the Division of Coastal Management.
- (g) Freestanding moorings and bird nesting poles shall not interfere with shellfish franchises or leases. Applicants for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.
- (h) Freestanding moorings shall not be constructed in a designated Primary Nursery Area as defined in 15A NCAC 7H .0208(a)(4) with less than two feet of water at normal low water level or normal water level under the General Permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.
- (i) Freestanding moorings located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:
 - (1) water depth at the freestanding mooring location is equal to or greater than two feet of water at normal low water level or normal water level; and
 - (2) the freestanding mooring is located to minimize the area of submerged aquatic vegetation or shellfish beds impacted under the structure as determined by the Division of Coastal Management.
- (j) Freestanding moorings and bird nesting poles shall not be established in submerged utility crossing areas or in a manner that interferes with the operation of an access through any bridge.
- (k) Freestanding moorings and bird nesting poles shall be marked or colored for the life of the mooring(s) in compliance with G.S. 75A-15 and the applicant shall contact the U.S. Coast Guard and N.C. Wildlife Resource Commission to ensure compliance. Permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.
- (l) Freestanding moorings shall bear owner's name, vessel State registration numbers or U.S. Customs Documentation numbers. Required identification shall be legible for the life of the mooring(s).
- (m) The type of material used to anchor a proposed mooring buoy(s) shall be non-polluting and of sufficient weight and design to anchor the buoy and vessel.

(n) Mooring buoys authorized by this General Permit shall be a minimum 12" in diameter or otherwise be designed to be recognized and not present a hazard to navigation.

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

(p) This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal permit requirements are met prior to implementation of the project, including G.S. 113A-107(a), 113A-118(d)(1) or 113A-120(b1)(4).

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