MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Floating Structure Policies and Shellfish Leases

The Commission has had a number of discussions and presentations related to shellfish aquaculture leases, public trust, CAMA jurisdictional issues, and the Division’s involvement in the review of proposed shellfish leases. You will recall that the Division informed the Commission that it was noting an increase in requests that incorporate structural components associated with leases that may require a CAMA permit. These components often include pilings, gear anchors, and platforms.

At your February 2020 meeting, DMF staff reported on rulemaking efforts that included buffers between leases, a maximum number of marker pilings, increased public notice, and a requirement that any leases not meeting MFC standards will require a CAMA permit as part of the formal lease review process. At their February 2021 meeting, the MFC voted to approve these lease rules but the final effective date is delayed till June 2022 due to the required legislative review of the rules per S.L. 2019-198, related to regulatory crimes. However, these MFC rules do not address structures sited on a lease, and DMF defers to DCM on permitting this type of activity.

Last year, the Commission discussed Floating Upweller Systems (FLUPSYs) in relation to the Floating Structure Policies at 15A NCAC 07M .0600. In response, amendments were approved to incorporate FLUPSYs into the policy which would allow these floating structures to be sited in a permitted marina or associated with a private docking facility, subject to the platform area limitations that apply to private docking facilities elsewhere in your rules.

More recently, the Division has seen other floating structures placed within open water leases, whose primary purpose appears to be to provide shelter for equipment and processing operations associated with the lease. The Division views these structures from the perspective of balancing many interests and concerns, including public trust rights, potential resource impacts (e.g. from shading or grounding), use of permanent moorings, riparian property rights, aesthetics, and the
rapid expansion and growth potential in the commercial cultivation of shellfish. The Commission’s original intent of the Floating Structures Policies was to protect public trust rights and water quality, primarily focused on health and safety concerns related to sewage disposal. However, the Commission was also focused on how these structures might be inconsistent with the Commission’s standards as they are considered a non-water dependent use.

The Floating Structure Policies (attached with latest amendments) were originally adopted in 1983. The provisions include the definition of a boat, and define a "floating structure" as

“...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.”

Floating structures must also conform with local regulations for on-shore sewage disposal, and not infringe upon public trust rights. Due to difficulties with enforcement and the CAMA definition of development (problems were encountered in cases where no pilings, excavation or filling was involved), the floating structure definition was incorporated into the CAMA definition of development in 1993, making it a regulated activity.

Since 1993, there have been a number of cases where owners have attempted to circumvent the policy by claiming that the structure met the definition of a boat by adding propulsion of sorts and registering the structure with the Wildlife Resources Commission. Over the years, several structures have been removed from state waters such as trailers on barges, mobile duck blinds and processing facilities associated with shellfish leases.

With the renewed interest in siting floating structures in shellfish leases, the Division is asking the Commission’s renewed guidance concerning the general policy in 15A NCAC 07M .0601, which states “...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.” In particular, DCM seeks guidance on how these limitations can be incorporated into a supportive management strategy for the expanding shellfish industry while limiting public trust impacts.

NC G.S. 113-202, New and Renewal Leases for Shellfish Cultivation, states that “Cultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation.”

Additionally, local governments, through their CAMA lands use plan policies, have often addressed floating structures more generally in the context of floating homes. A review of the 20 coastal county land use plans shows 14 having floating home/structure policies with nine using the 15A NCAC 07M .0601 definition. Of the 14 counties with floating structure polices, 10 oppose floating homes and one prohibits floating structures within the jurisdiction altogether.
While these policies don’t specifically address floating structures on shellfish leases, it is clear that local governments are concerned about the potential for occupancy of these structures in public trust areas.

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. We will also hear from the NC Coastal Federation about increased interest in floating processing facilities for shellfish leases, and potential interactions with the 7M Floating Structure Policies. I look forward to discussing the Floating Structure Policies and their relationship to shellfish cultivation at our upcoming meeting in Beaufort.