

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.1 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2701, .2704, .2705.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: December 13, 2018

Public Hearing:

Date: January 8, 2019

Time: 5:00 p.m.

Location: NCDQM, 400 Commerce Avenue, Morehead City, NC 28557

Reason for Proposed Temporary Action: *The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2018-136. Session Law 2018-136 Section 5.13 directs the Coastal Resources Commission shall adopt temporary rules pursuant to G.S. 150B-21.1 to revise the Commission's general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (15A NCAC 07H .2700) in order to make the general permit consistent with the United States Army Corps of Engineers Wilmington District regional general permit for living shorelines. The CRC is proposing to amend its rules governing the construction of marsh sills in order to be more consistent with other general permits that govern construction of shoreline stabilization methods such as bulkheads.*

Comment Procedures: *Comments from the public shall be directed to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557. The comment period begins December 21, 2018 and ends January 17, 2019.*

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF ~~RIPRAP~~ RIPRAP SILLS FOR WETLAND ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS MARSH SILLS

15A NCAC 07H .2701 PURPOSE

A general permit pursuant to this Section shall allow for the construction of ~~riprap~~ marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 07J .1100 and according to the rules in this Section. Marsh sills are generally shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Temporary Adoption Eff.*

15A NCAC 07H .2704 GENERAL CONDITIONS

- (a) Structures authorized by a permit issued pursuant to this Section shall be ~~riprap or stone~~ marsh sills conforming to the standards in these Rules.
- (b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.
- (c) The placement of ~~riprap or stone~~ marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial 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) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 07H .0200, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107; 113A-118.1;
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Temporary Adoption Eff.

15A NCAC 07H .2705 SPECIFIC CONDITIONS

- (a) A general permit issued pursuant to this Section shall be applicable only for the construction of ~~riprap or stone~~ marsh sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall consist only of native species.
- ~~(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.~~
- ~~(c)(b)~~ On shorelines where no fill is proposed, the ~~The~~ landward edge of the sill shall be positioned no more than 5 ~~greater than~~ 30 feet waterward ~~of the waterward depth contour of locally growing wetlands or to mid-tide depth contour, of the normal high water or normal water level or five feet waterward of the existing wetlands,~~ whichever distance is greater. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the mean high water or normal high water line.
- ~~(d)~~ On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.
- ~~(e)(c)~~ The permittee shall maintain the authorized sill and existing or planted wetlands including wetlands and tidal inundation in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification from the Division of Coastal Management.
- ~~(f)(d)~~ The height of sills shall not exceed ~~six~~ 12 inches above ~~mean normal~~ high water, normal water level, or the height of the adjacent wetland substrate, whichever is greater. higher.
- ~~(g)(e)~~ Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.
- ~~(h)~~ Sills shall be porous to allow water circulation through the structure.
- ~~(i)(f)~~ The sills shall have at least one five-foot ~~drop-down or~~ opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot ~~drop-down or~~ separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these ~~drop-down opening~~ requirements shall be allowable following coordination with the N.C. Division of Marine Fisheries and the National Marine Fisheries Service. N.C. Division of Coastal Management.
- ~~(j)(g)~~ The ~~riprap sill~~ structure shall not exceed a slope of a ~~one foot rise over a two foot horizontal distance and a minimum slope of a one and a half foot rise over a one foot horizontal distance.~~ one and a half foot horizontal distance over a one foot vertical rise. The width of the structure on the bottom shall be no wider than ~~15~~ 12 feet.
- ~~(k)~~ For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.
- ~~(l)~~ The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.
- ~~(m)(h)~~ For water bodies ~~more narrow~~ narrower than 150 feet, no portion of the structures shall ~~not~~ be positioned offshore more than one sixth (1/6) the width of the waterbody.
- ~~(n)(i)~~ The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.
- ~~(o)(j)~~ The sill shall not interfere with leases or franchises for shellfish culture.
- ~~(p)(k)~~ All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the ~~mean normal~~ high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's ~~edge.~~ edge, as defined in 15A NCAC 07H .1205(t). Additionally, the sill shall not interfere with the exercise of riparians rights by adjacent property owners, including access to navigation channels from piers, or other means of access.
- ~~(q)~~ The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.
- ~~(r)(l)~~ Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above ~~mean normal~~ high water level. or normal water level and must be maintained for the life of the structure.
- ~~(s)(m)~~ If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the ~~riprap sill~~ structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless fully contained in a containment structure supported by construction mats.
- ~~(t)(n)~~ Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.
- ~~(u)(o)~~ No excavation or filling of any native submerged aquatic vegetation other than that necessary for the construction and proper bedding of the sill structure is authorized by this general permit.
- ~~(v)(p)~~ Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey should be completed during the growing season of April 1 thru September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation.
- ~~(w)(q)~~ Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.
- ~~(x)(r)~~ No excavation of the shallow water bottom or any wetland is authorized by this general permit.
- ~~(y)(w)~~ No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

~~(x) Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.~~

~~(y)(s) The riprap sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken concrete. Concrete or other materials that are approved by the N.C. Division of Coastal Management. Riprap Sill material shall be free of loose sediment or any pollutant. Pollutant, including exposed rebar. The structures sill material shall be of sufficient size and slope to prevent its movement from the site approved alignment by wave or current action.~~

~~(z) If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land disturbing activity.~~

~~(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.~~

~~(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement shall be required for the proposed activity.~~

~~(cc) Following issuance of this general permit, the permittee shall contact the N.C. Division of Water Quality and the U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the appropriate agency(s) that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.~~

Authority G.S. 113A-107; 113A-118.1.