

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

: LIS-GP-001 through LIS-GP-014

2007 OLISP GENERAL PERMITS

: DECEMBER 19, 2007

PROPOSED FINAL DECISION

**I
SUMMARY**

The Department of Environmental Protection (DEP) intends to issue the fourteen general permits listed above pursuant to General Statutes §§22a-28 through 35, inclusive, and §22a-359 as applicable. All the permits will authorize minor activities undertaken waterward of the high tide line in the tidal, coastal or navigable waters of the State.

The first nine permits will be re-issued, as they were previously approved and are set to expire. The remaining five permits will be newly issued. All the permits will be effective on the date issued by the Commissioner and will expire ten years from the date of issuance. The attached Summary, prepared by staff of the Office of Long Island Sound Programs (OLISP), lists the permits, notable provisions and/or conditions, and certain revisions.

I have reviewed the general permits as proposed and as revised, the relevant law and the record, including staff's post-hearing memorandum outlining its response to comments and explaining any resulting modifications to the permits.¹ I find that the proposed permits meet the requirements of General Statutes §22a-361(d)(1), which authorizes their issuance. These general permits should be issued as proposed and, where applicable, as revised.

¹ Staff's memorandum is part of the administrative record on file with the Office of Adjudications.

II
DECISION
A
FINDINGS OF FACT
1
Procedural History

1. On July 27, 2007, the DEP issued a notice of its intent to issue fifteen general permits.² All would authorize activities undertaken waterward of the high tide line in the tidal, coastal or navigable waters of the State of Connecticut. (Exs. DEP 1-7.)

2. A hearing was held on August 30, 2007, during which OLISP staff provided an overview of the proposed general permits and addressed questions from the public. Representatives of several beach associations were present and commented on the draft General Permit for Beach Grading and Cleaning Activities.

3. Written comments received before the hearing included recommendations from the Department of Agriculture/Bureau of Aquaculture on several permits and public comments on the General Permit for 4/40 Docks. (Exs. DEP 23-25.)

4. On December 7, 2007, staff filed the final proposed general permits incorporating comments received and an accompanying memorandum explaining modifications made in response to comments. (Exs. DEP- 8- 22.)

2
Summary of Post-Hearing Revisions to the Proposed General Permits
A
Re-Issued General Permits: LIS-GP-001 through LIS-GP-009

5. These nine general permits currently define high tide line as follows.

“High tide line” means high tide line as defined by section 22a-359(c) of the General Statutes. For the purposes of this general permit, the high tide line may be approximated by the elevation of the one year frequency tidal flood at a particular location, as shown on the most recently adopted U.S. Army Corps of Engineers Tidal Flood Profile.

² A fifteenth permit is not recommended for issuance at this time. *General Permit to Install, Use, Maintain and Remove Scientific Measuring Devices and Perform Survey Activities (LIS-GP-015).*

These permits were issued in 1997; OLISP has since determined that the U.S. Army Corps of Engineers Tidal Flood Profile is not an appropriate tool to identify the high tide line. Field investigations and other data have revealed that the Tidal Flood Profile may underestimate the elevation of the high tide line in most coastal applications. Therefore, the second sentence in the high tide line definition has been removed from the nine general permits proposed for re-issuance, leaving only the statutory reference to the definition set forth in General Statutes §22a-359c.

General Permit for 4/40 Docks (LIS-GP-001)

6. The Department of Agriculture/Bureau of Aquaculture (DA/BA) recommended that a permittee be required to obtain permission from oyster bed owners or lessees under §26-157a(e) of the General Statutes. Staff recommends the inclusion of clam bed owners or lessees. This draft permit has been revised to include a condition requiring permittees to obtain such permission where appropriate. (Section 3(b)(2)(AA).)

General Permit for Harbor Moorings (LIS-GP-002)

7. Pursuant to the suggestion of the DA/BA, the word “shellfish” has been added to the listing of coastal resources. In addition, the revised permit includes a condition requiring permittees to obtain, as appropriate, permission from oyster and clam bed owners or lessees under §26-157a(e). (Sections 3(b)(1)(J) and 3(b)(2)(B).)

General Permit for Non-Harbor Moorings (LIS-GP-003)

8. Although not pursuant to a specific recommendation by the DA/BA, this permit will also require permission from oyster and clam bed owners or lessees under §26-157a(e) as appropriate. (Section 3(b)(2)(I).)

General Permit for Osprey Platforms and Perch Poles (LIS-GP-004)

9. Following consultation with DA/BA, this permit will now require that any osprey platform or perch pole be placed at least ten feet away from any open-water areas. (Section 3(b)(2)(H).)

General Permit for Residential Flood Hazard Mitigation (LIS-GP-005)

10. No revisions have been recommended for this general permit.

General Permit for Buoys or Markers (LIS-GP-006)

11. Pursuant to a suggestion from DA/BA and a staff recommendation, this permit has been revised to require permittees to obtain permission, as appropriate, from oyster and clam bed owners or lessees under §26-157a(e). (Section 3(b)(1)(F).)

General Permit for Swim Floats (LIS-GP-007)

12. Pursuant to a suggestion from DA/BA and a staff recommendation, this permit has been revised to require permittees to obtain permission, as appropriate, from oyster and clam bed owners or lessees under §26-157a(e). The renewal requirement has also been eliminated. (Section 3(b)(2)(L).)

General Permit for Pump-out Facilities (LIS-GP-008)

13. As suggested by the DA/BA, the revised permit will require that any registrations filed with the commissioner be concurrently submitted to the DA/BA for review. The DA/BA is also listed in this permit's contact list in the event of a spill from a pump-out facility. (Sections 3(b)(2)(F) and 4(d).)

General Permit for Coastal Remediation Activities Required by Order (LIS-GP-009)

14. The DA/BA suggested that it be contacted to review any remedial activity prior to permit issuance. Accordingly, this revised permit requires registrations submitted to the DEP also be filed concurrently with the DA/BA for review. (Section 4(d).)

B

Newly Issued General Permits: LIS-GP-010 through LIS-GP-014

***General Permit for Maintenance of Catch Basins and Tide Gates
in Closed Discharge Systems (LIS-GP-010)***

General Permit for Removal of Derelict Structures (LIS-GP-011)

15. No revisions have been recommended for these general permits.

General Permit for Beach Grading (LIS-GP-012)
(General Permit for Beach Cleaning and Beach Grading)

16. In response to public comment regarding the “bleach cleaning” aspect of the proposed permit, staff reassessed this activity and the scope of §22a-361 and has concluded that it is not clearly evident in the statute. Therefore, beach cleaning has been removed from the permit, which will now only pertain to seasonal beach grading. Also, to eliminate yearly reporting, the permit authorization has been extended from one to three years, allowing up to three beach grading actions under one permit. (Section 3(a).)

General Permit for Marina and Mooring Field Reconfiguration (LIS-GP-013)

17. The DA/BA suggested it be contacted to review any new facility prior to issuance of a general permit for activities that would result in an increase in the number of certain types of boats at a marina. However, as this permit does not allow for a facility to increase the capacity of the marina, there are no instances where the DA/BA would need to be contacted. Therefore, no changes are necessary.

General Permit for Minor Seawall Repair (LIS-GP-014)

18. The definition of “seawall” in this permit has been changed to clarify that the term “revetments” was intended to include riprap slopes. Also, a condition has been added to make clear that the work covered under this permit does not include “substantial maintenance” as this term is defined in §22a-363a, which includes rebuilding or reconstructing a seawall. (Sections 2 and 3(b)(1)(B).)

C

Permit Not Issued

***General Permit to Install, Use, Maintain and Remove Scientific Measuring Devices
and Perform Survey Activities (LIS-GP-015)***

19. OLISP staff recommends that this permit not be approved at this time. Comments received provide recommendations to improve the effectiveness and utility of this permit. The extensive nature of changes and the consensus needed to support such changes will require time to revise this permit or propose a new permit to effectively capture the full extent of the recommendations.

III

CONCLUSION

The activities authorized under these proposed general permits, when conducted in accordance with their terms and conditions would: 1) cause minimal environmental effects when conducted separately; 2) cause only minimal cumulative effects; 3) be consistent with the considerations and public policy set forth in §§22a-28 through 22a-35, inclusive, and §22a-359, as applicable; 4) be consistent with the policies of the Connecticut Coastal Management Act, §§22a-60 through 22a-112; and 5) constitute an acceptable encroachment into public lands and waters. General Statutes §22a-361(d)(1).

IV

RECOMMENDATION

I recommend that the Commissioner issue the general permits, as proposed, and, where appropriate, as modified.

/s/ Janice B. Deshais
Janice B. Deshais
Hearing Officer

**SUMMARY
PROPOSED 2007 OLISP GENERAL PERMITS**

Reissue Or New	General Permit Name & Number	Cost	Is a Registration Required?	Type of Approval	Notes	What's New?
Reissue	4/40 Docks #DEP-LIS-07-001	\$700	Y	Approval	Allows construction of a residential dock with a length limit of < 40' from MHW or to a depth of < -4.0' MLW, 4' wide, < 100 sf float, total dock < 220 sf.	New requirement for applicant to submit copy of the registration to local HMC concurrent with submission to DEP.
Reissue	Harbor Moorings #DEP-LIS-07-002	0	N	N/A	For noncommercial moorings; permit from harbormaster needed.	No changes proposed.
Reissue	Non-Harbor Mooring #DEP-LIS-07-003	\$100	Y	Approval	For noncommercial moorings; where mooring is not subject to jurisdiction of a harbormaster.	Removed expiration date for authorized mooring.
Reissue	Osprey Platforms and Perch Poles #DEP-LIS-07-004	0	Y	Approval	For perches and poles proposed waterward of HTL	Updated mesh size on Attachment B per Wildlife Division recommendation from 2" x 4" to 2" x 2".
Reissue	Residential Flood Hazard Mitigation # DEP-LIS-07-005	\$100	Y	Approval	For elevation and floodproofing of existing houses to FEMA standards. Local approvals must have first been obtained. All work landward of MHW.	No changes proposed.
Reissue	Buoys or Markers # DEP-LIS-07-006	0	N	N/A	For buoy, marker, water-skiing ramp, or other navigation or recreation marker, permit must be obtained from DEP/Boating.	No changes proposed.
Reissue	Swim Floats # DEP-LIS-07-007	\$100	Y	Letter	For individual swim floats. Cannot be part of a boating dock.	Removed expiration date for authorized swim float.
Reissue	Pump-Out Facilities # DEP-LIS-07-008	\$100	N if app rec's CVA grant	N/A	Installation, repair, upgrade of a pump-out facility.	Updated contact information for sewage spills to DEP Emergency Response & Spill Prevention, rather than Director of PERD.
			Y	Letter		
Reissue	Coastal Remedial Activities Required by Order #DEP-LIS-07-009	\$700	Y	Approval	For expedited review of coastal regulatory authorization for remedial activities required by a DEP Order.	Updated to include other agency Orders, e.g. US EPA, US ACOE, etc.
New	Maintenance of Catch Basins and Tide Gates # DEP-LIS-07-010	0	N	N/A	For removal of sand or sediment from within tidally-influenced catch-basin; and for repair of previously authorized tide gate	
New	Removal of Derelict Structures #DEP-LIS-07-011	\$100	Y	Approval	For removal of derelict structures or vessels. Work allowed in tidal wetlands provided no adverse impact. Seasonal restriction on ALL work between 6/1 – 9/30.	
New	Beach Grading #DEP-LIS-07-012	\$100	Y	Letter	For once per year beach grading. ALL work prohibited between 5/10 – 7/15.	Beach cleaning activity was removed from the proposed GP.
New	Marina & Mooring Field Reconfig. #DEP-LIS-07-013	\$700	Y	Approval	To establish a boundary around a public marina/yacht club or mooring field, within which the permittee may reconfigure floats or moorings. No allowance for increase in berthing capacity of the facility. Work is prohibited in tidal wetlands or intertidal flats.	

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General Permit Summary

New or Reissue	General Permit Name & Number	Cost	Is a Registration Required?	Type of Approval	Notes	What's New?
New	Minor Seawall Repair # DEP-LIS-07-014	0	N	N/A	For minor repairs to existing authorized or legally installed seawalls. Does not allow any waterward encroachment or increase in height or length of the seawall.	

P A R T Y L I S T

2007 OLISP General Permits
Permit Nos. LIS-07-001 through LIS-07-014

PARTY

REPRESENTED BY

Department of Environmental Protection

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