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Rule: 62-330.632

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Rule Title: General Permit for the Restoration, Establishment and Enhancement of low profile Oyster Habitat

Department: [DEPARTMENT OF ENVIRONMENTAL PROTECTION](#)

Division: [Departmental](#)

Chapter: [ENVIRONMENTAL RESOURCE PERMITTING](#)



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Latest version of the final adopted rule presented in Florida Administrative Code (FAC):



Effective Date: 10/1/2013

History Notes: Specific Authority [373.113](#), [373.118](#), [373.171](#), [373.4131](#) FS. Law Implemented [253.034\(1\)](#), [373.118](#), [373.406\(5\)](#), [373.4131](#), [373.414\(9\)](#), [403.814\(1\)](#) FS. History–New 10-1-13.

References in this version: No reference(s).

History of this Rule since Jan. 6, 2006

Notice / Adopted	Section	Description	ID	Publish Date
	Final 62-330.632	General Permit for the Restoration, Establishment and Enhancement of low profile Oyster Habitat	13561781	Effective: 10/01/2013
	Change 62-330.010	Purpose and Implementation, Regulated Activities, Procedures for Review and Agency Action on Exemption Requests, Exempt Activities, No-fee Noticed Exemptions for Construction, Operation, Maintenance,	13386502	8/15/2013 Vol. 39/159
	Proposed 62-330.010	Section 373.4131, F.S., created by Chapter 2012-94, Laws of Florida, and effective July 1, 2012, requires the Department (DEP), in coordination with the five Water Management Districts (WMDs), to develop statewide environmental	12792959	4/12/2013 Vol. 39/72

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62-330.632 General Permit for the Restoration, Establishment and Enhancement of Low Profile Oyster Habitat.

(1) A general permit is hereby provided for the construction, restoration, and enhancement of low profile oyster habitat (LPOH), subject to the following:

- (a) The total footprint of the LPOH is one quarter acre in size or less as verified by GPS or boundary survey;
- (b) The work shall be conducted by persons having expertise designing and implementing oyster habitat restoration activities and that the person will carefully supervise all persons responsible for installing the LPOH;
- (c) The LPOH will not be inconsistent with a management plan approved by a federal, state, regional and/or local agency, that already addresses oyster habitat, wetland vegetation, submerged resources, water quality, navigation, or fishing and recreational values of the waterbody, including any adopted aquatic preserve management plan under Chapter 18-20, F.A.C.;
- (d) The LPOH shall not be part of a mitigation proposal or be used as mitigation to offset impacts from other projects;
- (e) The LPOH is not regulated under Section 597.03, F.S., and is not intended to serve any aquaculture function; and
- (f) The LPOH will not adversely affect existing natural resources or resource activities within or adjacent to the footprint of the proposed LPOH footprint.

(2) The notice required in Rule 62-330.402, F.A.C., shall include documentation, statements, or demonstrations that the above limitations will be met, together with the following:

- (a) An explanation of the overall ecological benefit to be achieved by the LPOH;
- (b) Documentation that the person using this general permit has authorization from the landowner, other than the State of Florida, to conduct activities on their land; if located on state-owned submerged land, such documentation does not need to be provided with the notice – the authorization to conduct the LPOH activity on state-owned submerged lands will be a component of the Department’s evaluation of qualification to use the general permit;

(c) An environmental resource survey of the bottom of the waterbody throughout the LPOH area, including an additional 100 foot-wide perimeter surrounding the LPOH area demonstrating that:

- 1. The LPOH area, including the 100 foot-wide perimeter area, does not have other live native shellfish except as provided in paragraph (3)(d), below, nor submerged grassbeds, clam beds, hardbottom, coral, or macroalgae communities;
- 2. The LPOH will not affect an archaeological, cultural, or historical resource area regulated under Chapter 267, F.S.;
- 3. The LPOH will not have any work conducted within 100 meters of actively nesting wading bird colonies or within 180 meters of actively nesting mixed tern/skimmer colonies;
- 4. The LPOH will not be constructed within:
 - a. 100 feet of the near bottom edge of a federally maintained channel, where near bottom is defined as the design edge of the established channel closest to the project not including the slope, without written approval from the entity responsible for channel maintenance;
 - b. 100 feet from the outside edge of any designated channel marked in accordance with Section 327.40 F.S. without written approval from the entity responsible for channel maintenance;
 - c. Any channel traditionally used for navigation;
 - d. 100 feet of any dock or overwater structure without notice to the current property owner;
 - e. Any other designated management zone that requires approval to conduct activities unless written approval is received from the managing agency; or
 - f. Any previously permitted mitigation areas; and
- (d) Agreement that the activity will comply with the additional conditions of subsection (3), below.

(3) All work under this general permit shall be conducted in conformance with the general conditions of Rule 62-330.405 F.A.C., and the following specific conditions:

(a) The LPOH shall be installed, restored, or enhanced using only clean, sediment free culture materials (cultch) that does not contain deleterious substances that have the potential to leach into surface waters. Cultch shall consist of:

- 1. Recycled shell that has been quarantined for a minimum of three months;
- 2. Fossil shell;
- 3. Limerock consisting of a minimum of 20 percent calcium carbonate by volume, with 90 percent of the limerock being no more than six inches in diameter; or
- 4. Concrete material in which at least 90 percent of the concrete material is no more than 6 inches in diameter. Concrete shall not be used for a LPOH located in an aquatic preserve designated under Chapter 18-20, F.A.C.

(b) Cultch shall be firmly fixed on the substrate and contained in such a way as to prevent movement away from the LPOH footprint, through use of designs such as bagged shell, loose cultch surrounded and contained by bagged shell, or shell securely fixed to aquaculture grade mesh material.

(c) LPOH materials shall not be indiscriminately dumped, and shall not be placed outside of the total footprint limits.

(d) The LPOH may consist of placement of cultch in locations where no oyster reef currently exists, or restoration of an existing degraded oyster reef to its historic height. Cultch shall not be placed on top of substrate with greater than five live oysters per square meter. Final elevation shall not exceed 18 inches above the existing bottom elevation in locations where no oyster reef currently exists. In existing oyster reef locations, if the historical oyster reef elevation is unknown, restoration shall not result in the placement of cultch to an elevation height greater than the average elevation height of existing natural oyster reefs in the immediate vicinity of the LPOH area.

(e) The LPOH shall not cause harmful erosion or shoaling to adjacent submerged areas and shorelines.

(f) The LPOH shall avoid impacts to the fishing and recreational use of the waterbody, its aquatic and wetland dependent species, and its submerged resources.

(4) A minimum of 60 days prior to submittal of a notice required in subsection (2), the person proposing to use this general permit shall conduct at least one pre-notice meeting with the appropriate Agency staff to discuss the project design, implementation details, and any resource concerns. If the LPOH is included within an aquatic preserve designated in Chapter 18-20, F.A.C., the appropriate aquatic preserve manager, or their designee, shall be invited to the pre-notice meeting.

(5) Within 45 days but no less than 30 days prior to the submittal of the notice required in subsection (2) the person proposing to use this general permit shall:

(a) Publish a one-time notice in a newspaper of paid general circulation in the vicinity of the project location. The newspaper notice shall provide that any concerns about the LPOH shall be directed to the Department at the Department's contact address. An affidavit of publication shall be included with the notice required in subsection (2).

(b) Provide written notice to the appropriate Inland Navigation District, and any other special taxing district with authority to construct or maintain navigation channels within the proposed LPOH. In counties where such districts do not exist, the same written notice shall be provided to the county or municipal agency with jurisdictional authority over inland navigation. A copy of each notice shall be included with the notice required in subsection (2).

(c) Provide written notice of the proposed LPOH to the Florida Fish and Wildlife Conservation Commission's Boating and Waterways Section. A copy of the notice shall be included with the notice required in subsection (2) above;

(d) Post readily visible notice of the proposed LPOH at the nearest public boat ramp to the LPOH site, unless prohibited by law. The notice should indicate the location of the LPOH and phone number of the appropriate agency to direct comments to on the proposed LPOH. A copy of the notice and boat ramp locations where the notice was posted shall be included with the notice required in subsection (2), above.

All of the above notices include georeferenced coordinates (latitude and longitude) for the LPOH site, or refer to an Internet site that includes a georeferenced map with coordinates of the LPOH site.

(6) Implementation of the activities authorized in this general permit shall not commence until the Department has confirmed compliance with the terms and conditions of this general permit. The Department will provide written notification whether the proposed activity qualifies for this general permit within 30 days of the Department's receipt of all the materials required above. The proposed activity shall not be commenced until the Department has provided written notice that the person proposing to use this general permit qualifies for the general permit. Any denial by the Department of qualification to use this general permit shall be made without prejudice for the submission of an individual application for the same or a modified LOPH.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171, 373.4131 FS. Law Implemented 253.034(1), 373.118, 373.406(5), 373.4131, 373.414(9), 403.814(1) FS. History--New 10-1-13.