

Fiscal Analysis

Use of Floating Platforms and Docks

Amendments to 15A NCAC 7H .1204 &.1205

General Permit for Construction of Piers and Docking Facilities in Estuarine and Public Trust
Waters and Ocean Hazard Areas – General & Specific Conditions

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Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	General Permit for Construction of Piers and Docking Facilities in Estuarine and Public Trust Waters and Ocean Hazard Areas - General & Specific Conditions
Citation	15A NCAC 7H .1204 & .1205
Description of the Proposed Rule	7H.1200 defines specific development requirements in Estuarine and Public Trust and Ocean Hazard Areas for the construction of piers and docking facilities. The proposed rule change amends language in sections 7H.1204 and 7H .1205 pertaining to the storage of boats on floating or fixed platforms not being counted as docking spaces.
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Authority	113A-107(a); 113A-107(b); 113A-113(b)(6); 113A-118.1; 113A-124.
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules in order to alter how boat slips are counted so that boats stored on platforms (floating or fixed) shall not count as docking spaces. The changes will serve the public good by providing greater flexibility in the use of the General Permit for the construction of piers and docking facilities. Riparian property owners will be able to more fully utilize this expedited General Permit as opposed to more complex Major Permit process. The proposed rule changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private entities: Yes

Summary

The Coastal Resources Commission (CRC) is modifying its General Permit (GP) for docks and piers to alter how the CRC defines the use of platforms so that boats stored on platforms (floating or fixed) shall not count as docking spaces. The proposed rule amendments (see proposed rule text in the Appendix) will provide greater flexibility to riparian property owners in the use of the non-commercial docking facilities.

Current CRC rules allow piers and docking facilities to be designed to provide docking space for no more than two boats on an individual pier and up to four boats on a shared pier. Over the years, the Division of Coastal Management has seen an increase in the use of personal water craft (PWC) stored on platforms or docks, which has resulted in permits being elevated from a GP to the Major Permit (MP) review process for the inclusion of a third docking space for a PWC or canoe or kayak. In addition, based on direction from the CRC in the late 1990's, stored boats have been counted as slips whether they are in a wet slip, boat lift, boathouse, drive on jet dock, or simply placed on the existing platform(s). Applying slip counts in this manner has resulted in counting both slip number and platform size/shading impact against property owners.

The Commission is therefore modifying the GP for pier and docking facilities so that boats stored on platforms (floating or fixed) shall not count as docking spaces. The amended pier and docking facilities rule would apply when riparian property owners are seeking a Coastal Area Management Act (CAMA) permit for the construction of docking facilities that also include the storage of boats on fixed or floating platforms that have been included in the shaded area impacts conditions of the General Permit 15A NCAC 7H .1204 & 7H .1205. Based on a review of CAMA MPs for the past 12 years, approximately 20 docking facility projects per year will be permissible under the GP process.

The economic impacts of this proposed rule change are potential benefits to property owners will be a \$50 savings (\$1,000 per year for all affected facilities) in permit fee as well as a \$500 - \$1,500 saving in consultant fees related to Major Permit applications (\$5,000 - \$15,000 for all affected parties). Property owners who do not use consultant services will also likely benefit in the form of reduced time spent completing permit applications, as completing the GP application requires less time than the MP application. All property owners eligible for the GP will also receive a time-savings benefit as a GP can be issued in one to two days, whereas a MP can take as long as 75 days. Total cost savings will be \$6,000 - \$16,000 each year. Assuming an annual maximum savings of \$16,000, the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$112,000, at a discount rate of 7%.

These amendments will have no impact on NC Department of Transportation (NC DOT) projects, local governments or the federal government. There will be a \$1,000 reduction in Division of Coastal Management (DCM) permit receipts. DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to review applications for common private-docking related projects under the more rigorous MP process.

The proposed effective date of these amendments is June 1, 2014.

Introduction and Purpose

With the increasing use of Personal Watercraft (PWC) and boat lifts, a growing number of property owners seeking small-scale docking facilities are no longer able to utilize the General

Permit (GP) 15A NCAC 7H .1200 General Permit for Construction of Piers and Docking Facilities In Estuarine and Public Trust Waters and Ocean Hazard Areas; or, after obtaining the GP, owners sometimes decide to fit multiple PWCs into a single docking space or boat lift or store multiple PWCs on a floating platform. Docking more than two vessels creates a technical violation based on existing use standards and GP requirements. The proposed amendments alter how boat slips are counted so that boats stored on platforms (floating or fixed) shall not count as docking spaces.

The Coastal Resources Commission amended Coastal Area Management Act (CAMA) General Permit 7H.1200 in 2009 to provide greater flexibility in the use of this GP for construction of individual docks and piers; and for the first time, to allow for shared piers and docking facilities. Based on direction from the CRC in the late 1990's, stored boats have been counted as slips whether they are in a wet slip, boat lift, boathouse, drive-on jet dock, or are simply placed on existing platform(s). Applying slip counts in this manner has resulted in counting both slip number and platform size/shading impact against the property owner, limiting the number of slips as well as the total square footage of allowable platforms. Over the years, staff has seen an increase in the use of personal water craft (PWC), which has resulted in a number of permits elevated from a GP to the Major Permit (MP) review process for the inclusion of a third docking space for a PWC or canoe or kayak. In an effort to provide greater flexibility to property owners in the use of non-commercial docking facilities, while continuing to adhere to the two-boat docking-space limit, the Commission is proposing a modification to the GP to alter how platforms can be used that have already been accounted for in the total square footage allowable under the GP. Under the proposed modified-use definition, boats stored on platforms (floating or fixed) shall not count as docking spaces.

Description of Rule Amendment

15A NCAC 7H .1204 and 7H .1205 include the General and Specific Use Standards for the construction of new piers and docking facilities (including pile-supported or floating) in the estuarine and public-trust waters Areas of Environmental Concern (AECs) and construction of new piers and docks within coastal wetlands AECs. The proposed rule amendment to 15A NCAC 7H .1205 clarifies that piers and docking facilities shall provide docking space for no more than two boats, excluding platforms that have already been accounted for within the shading-impacts condition of the permit. The total square footage of shaded impact for docks and mooring facilities allowed under the GP is eight square feet per linear foot of shoreline, with a maximum of 800 square feet. The proposed amendments also clarify that boats stored on floating or fixed platforms are not counted as docking spaces. The exceptions to the width requirements in 7H .1205(k) are being deleted (e through i) since they no longer reference width limitations after a 2003 change to the Commission's piers and docking-facilities rules. The reference to (j) is being deleted as it refers to the width of docking facilities over coastal wetlands, whereas the exception for structural modifications needed to prevent or minimize storm damage (k) applies to pier structures. These amendments are necessary for consistency within the rules.

The amendments to 7H .1204 create an exception to the two-boat limitation for the provision of boat storage space on platforms. The reference to shared piers is being deleted, as those provisions are already included in 7H .1205(u), and the exception for boats stored on platforms would also be applicable in these situations.

Cost or Neutral Impacts

Private Property Owners:

The proposed rule amendments would apply to riparian property owners seeking a CAMA permit for the construction or replacement of a noncommercial pier or docking facility used to store canoes, kayaks, PWC or boats on structures such as fixed or floating platforms that have already been included in the calculation of shading impacts allowed under the GP. In the past 10 years, there have been approximately 40 MPs that have involved PWCs and platforms. During that same time period, approximately 160 MPs were issued for docking facilities of up to four slips. The average number of permit applications over this timeframe (20 per year) is considered to be typical and it is assumed that there will continue to be 20 permit applications of this type in the future.

A GP for the construction of a pier or docking facility costs \$200 versus \$250 for a MP involving these same facilities. In order to estimate the potential cost savings to property owners, it is assumed that these property owners could have taken advantage of the exception for the storage of boats on floating or fixed platforms. The \$50 difference in permit fee is estimated to save property owners \$1,000 in permit fees per year.

Many property owners utilize the services of consultants in the preparation of MPs. Under the proposed amendments, many of these property owners are unlikely to need the services and will therefore spend less on consultant fees. Based on DCM experience working with property owners, approximately half of MP applicants utilize the services of consultants to complete MP applications. Assuming half of the applicants for a MP would continue to utilize consultant services in the absence of the proposed rule change, at an estimated cost of \$500 - \$1,500 (also based on DCM experience working with property owners), the proposed amendments could save property owners an additional \$5,000 – \$15,000 per year. Property owners who do not use consultant services will also likely benefit in the form of reduced time spent completing permit applications, as completing the GP application requires less time than the MP application. Combining the permit-related and consultation-fee-related savings to property owners yields a total of \$6,000 - \$16,000 in estimated benefits per year.

In addition to the financial savings to property owners, and perhaps more significantly, they will also experience a benefit in the form of a much shorter review period for a GP as compared to a MP. A MP is reviewed by 13 state and federal agencies, and issuance of a permit can take up to 75 days. A GP is often issued by DCM field representatives in one or two days.

NC Department of Transportation (NC DOT):

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .1204 and 7H .1205 will not affect environmental permitting for the NC DOT. While NC DOT would be eligible for the GP and its associated uses, it is unlikely that NC DOT will be involved in such a project. In the past 10 years, there have been no NC DOT MP projects involving platforms and the storage of boats.

Local Government:

While local governments would be eligible for the GP and its associated uses, and are often involved in projects that provide PWC, boat, canoe or kayak launches, they are typically not

involved in projects providing storage. In the past 10 years, there have been no local government MP projects involving platforms and the storage of boats.

Division of Coastal Management (DCM):

DCM's permit review process will not be changed by these amendments as property owners will still need to obtain a CAMA GP. While the \$1,000 decrease in permit receipts is not seen as significant, DCM and other state/federal permit review agencies will also realize a time-savings benefit by not having to review applications for common private-docking related projects under the more rigorous MP process. This is consistent with the intent of the GP process.

Cost/Benefits Summary

Private Citizens:

The amended pier and docking facilities rule would apply when riparian property owners are seeking a CAMA permit for the construction of docking facilities that also include the storage of boats on fixed or floating platforms that have already been included in the calculated shaded area impacts conditions of the GP (15A NCAC 7H .1204 & 7H .1205). Based on a review of CAMA MPs for the past 10 years, approximately 20 additional docking facility projects per year will be permissible under the GP process that would otherwise require a MP.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who may experience a \$50 savings (\$1,000 per year for all affected facilities) in permit fees and, for some, a \$500 - \$1,500 savings in consultant fees (\$5,000 - \$15,000 per year among all property owners forgoing consultant services). Property owners will also receive a time-savings benefit because a GP can be issued in one to two days, whereas a MP can take as long as 75 days. Total financial benefits will be approximately \$6,000 - \$16,000 each year. Assuming an annual maximum savings of \$16,000, the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$112,000, using a 7% discount rate.

APPENDIX A

SECTION .1200 – GENERAL PERMIT FOR CONSTRUCTION OF PIERS AND DOCKING FACILITIES: IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1201 PURPOSE

15A NCAC 07H .1204 GENERAL CONDITIONS

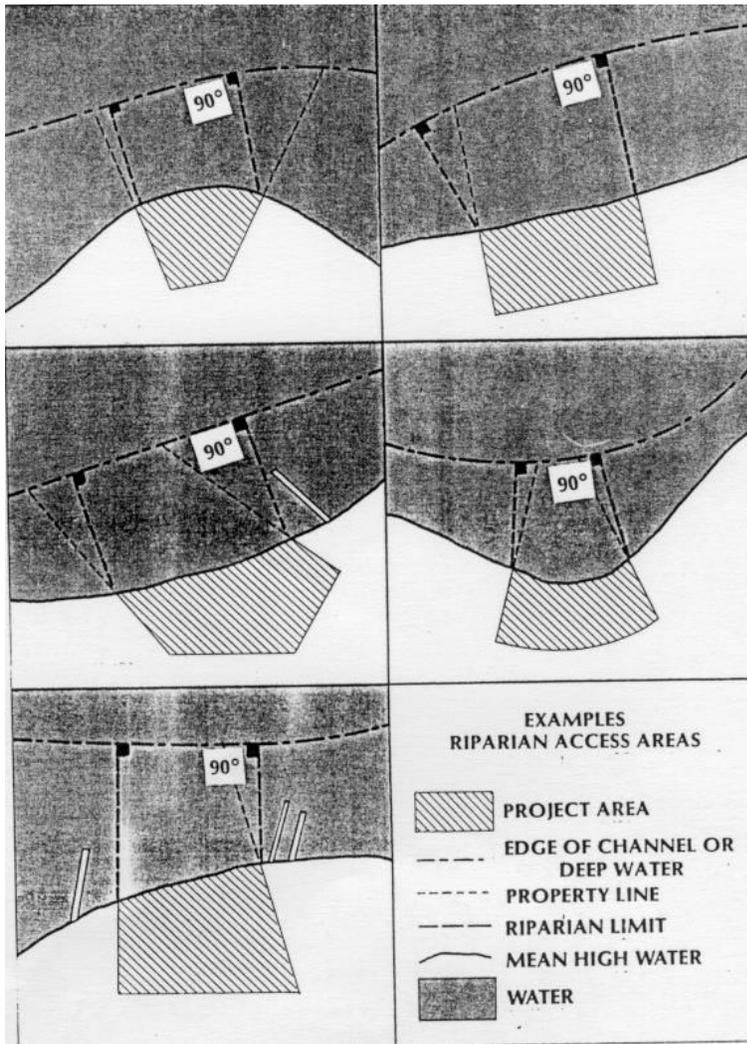
- (a) Piers and docking facilities authorized by this general permit shall be for the exclusive use of the land owner, or occupant and shall not be leased or rented or used for any commercial purpose. Except in the cases of shared piers as Ppiers and docking facilities shall designed to provide docking space for no more than two boats, shall, Docking facilities providing docking space for more than two boats because of their greater potential for adverse impacts, shall be reviewed through the major permitting process and, therefore, are not authorized by this general permit, excluding the exceptions described in Section 7H .1205 of this Rule.
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary 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.
- (c) There shall be no interference with navigation or use of the waters by the public by the existence of piers and docking facilities.
- (d) This permit shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).
- (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, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

- (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
- (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.
- (c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.
- (d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.
- (f) The maximum size of any individual component of the docking facility authorized by this General Permit shall not exceed 400 square feet.

- (g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level (whichever is applicable) under this permit without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).
- (h) Piers and docking facilities 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 (whichever is applicable) if the following two conditions are met:
- (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level (whichever is applicable).
 - (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure.
- (i) Floating piers and floating docking facilities located in PNAs, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level, whichever is applicable.
- (j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (k) The width requirements established in Paragraphs (d), (e), (f), (g), (h), (i), and (j), of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.
- (l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.
- (m) The area enclosed by a boat lift shall not exceed 400 square feet.
- (n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.
- (o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act.
- (p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.
- (q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the 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 of the pier 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 the pier or docking facility. 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. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.
- (r) Piers and docking facilities shall ~~be designed to~~ provide docking space for no more than two boats (a boat is defined in 15A NCAC 07M.0602(a) as a vessel or watercraft of any size or type specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water) except when stored on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.
- (s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with (a) through (t) of this rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using (e) of this rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in subparagraph (q) of this rule as it applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.
- (5) The construction of a second access pier or docking facility not associated with the shared pier shall require authorization through the CAMA Major full review permit process.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984;
 Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;
 RRC Objection due to ambiguity Eff. March 18, 1993;
 Amended Eff. August 1, 1998; April 23, 1993;
 Temporary Amendment Eff. December 20, 2001;
 Amended Eff. July 1, 2009; April 1, 2003.
 Amended Eff. June 1, 2014