

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director



NORTH CAROLINA
Environmental Quality

CRC-21-39

October 25, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Fiscal Analysis 15A NCAC 07H .0208(b)(6) & 7H .1200 - Structural Boat Covers

The Commission has approved amendments to 15A NCAC 7H .0208(b)(6)(D) and 7H .1205(l) clarifying that structural boat covers will be reviewed under rules governing boathouses but will be allowed on smaller lots when using screened material for side walls. As structural boat covers are typically utilized in conjunction with boats stored on lifts, the shading, navigation and visual impacts associated with these covers tends to be less than with traditional boat houses. Boathouses and structural boat covers will continue to be subject to existing square footage limitations based on shoreline length found in 15A NCAC 07H .0208 (b)(6)(B) and 15A NCAC 07H .1205(e). Also incorporated is a clarification that boathouse wall heights are measured down to the Normal Water Level or Normal High Water level.

The primary fiscal impact of the proposed changes will be clarity in the permitting process for riparian property owners seeking permits for the installation of structural boat covers. Over the past 10 years, the Division has permitted less than 10 structural boat covers and expects to see approximately 50 per year coast wide. Allowing property owners with shorter shorelines, who are currently precluded from constructing a boat house, a different option to protect vessels from the elements will provide an added benefit. Since these structures will be permitted under the existing regulatory framework for boathouse (General Permit fee of \$200), the Division anticipates no additional costs to private property owners since a structural boat cover is not a requirement but an optional accessory.

The Division does not anticipate many requests from NCDOT or local governments for structural boat covers; however, the impact of these rule amendments will be similar to private property owners in that they will provide regulatory clarification in the permitting process. As these rule amendments clarify the permitting of structural boat covers under the existing regulatory framework for boathouses, the Division anticipates an increase of \$10,000 in permit fees (50 permits per year at \$200 fee). The Division will also benefit from regulatory clarity when advising property owners of rule requirements.

The fiscal analysis has been reviewed and approved by both DEQ and OSBM. I look forward to discussing this analysis at our upcoming meeting in Atlantic Beach.



Fiscal Analysis

15A NCAC 7H .0208(b)(6) & 7H .1205

Structural Boat Covers

Prepared by

Mike

Lopazanski

NC Division of Coastal Management

(252) 808-2808

October 8, 2021

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Citations and Titles	15A NCAC 7H .0208(b)(6) – Piers and Docking Facilities 15A NCAC 7H .1205 – Specific Conditions
Description of the Proposed Rules	Section 7H .0208(b)(6)(D) defines the general use standards under which piers and docking facilities are authorized. Section 7H .1205 are the specific conditions that apply to the General Permit for the construction of boathouses. The proposed rule change would allow for the permitting of structural boat covers (canvas over a frame) in a manner similar to traditional boathouses.
Agency Contact	Mike Lopazanski Deputy Director Mike.Lopazanski@ncdenr.gov (252) 808-2808
Authority	113A-107(b); 113A-108; 113A-113(b); 113A-124; 113A-107(a); 113A-118.1;
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules to allow the permitting of structural boat covers under similar conditions to boathouses.
Impact Summary	State government: Yes Local government: No Private entities: No Substantial impact: No

Description of Rule Amendment

Coastal Resources Commission rules, 15A NCAC 07H.1205 and 07H.0208(b)(6)(D), limit boathouses to a maximum of 400 square feet, restrict their siting to lots with a minimum of 75 feet of shoreline, and limit the walls of boathouses to “one half of 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.” These rules do not allow boathouses on lots with less than 75 linear feet of shoreline, and boathouses can be no larger than 400 square feet unless the applicant can justify a larger structure through the major permitting process. In addition, side walls can extend no farther than one-half the height of the walls as measured in a downward direction from the top wall plate or header only covering the top half of the wall and the boathouse roof greatest exterior dimension must be in compliance with the maximum square footage requirements found in 15A NCAC 07H .0208 (b)(6)(B) and 15A NCAC 07H .1205(e). The rules are intended to address a range of potential concerns, including increased shading impacts, and increased visual/aesthetic impacts along a shoreline.

Structural/retractable boat covers, which rely on a fixed frame rather than being directly attached to a vessel have generated some interest among coastal riparian property owners and the Division has issued a small number of General Permits for structural covers in accordance with use standards that apply to boathouses. Although these rules do not specifically address structural boat covers, the Coastal Resources Commission believe that similarities between boathouses and structural covers warrant the application of these rules with some exceptions. For example, the solid canvas material typically used for the side “walls” of retractable covers could be replaced with a canvas screen product to reduce visual impacts in a manner that other Commission rules which allow screening within gazebos, and the Commission therefore does not intend to restrict the height of the side walls of a structural boat cover when using screened canvas.

The Commission is proposing to amend 15A NCAC 7H .0208(b)(6)(D) and 7H .1205(l) to clarify that structural boat covers will be reviewed under rules governing boathouses but will be allowed on smaller lots when using screened material for side walls. As structural boat covers are typically utilized in conjunction with boats stored on lifts, the Commission believes the shading, navigation and visual impacts associated with these covers to be less than traditional boat houses. Boathouses and structural boat covers will continue to be subject to existing square footage limitations based on shoreline length found in 15A NCAC 07H .0208 (b)(6)(B) and 15A NCAC 07H .1205(e). Staff also incorporated a clarification that wall heights are measured down to the Normal Water Level or Normal High Water level.

Impact Analysis

Private Entities:

The primary impact of the proposed rule amendments will be clarity in permitting process for riparian property owners seeking permits for the installation of structural boat covers. Over the past 10 years, the Division has permitted less than 10 structural boat and over the next expect to see approximately 50 per year coast wide. The Commission is also allowing the use of structural boat covers on shorelines less than 75 feet in length. This change will allow property owners with shorter shorelines who are precluded from constructing a boat house an option to protect vessels from the elements. Since these structures as been permitting these structures under the existing regulatory framework for boathouse (General Permit fee of \$200), the Division

anticipates no additional costs to private property owners since a structural boat cover is not a requirement but an optional accessory.

NC Department of Transportation (NC DOT):

The Division does not anticipate many requests from NCDOT for structural boat covers, however, the impact of these rule amendments will be similar to private property owners in that they will provide regulatory clarification in the permitting process.

Local Government:

The Division does not anticipate many requests from NCDOT for structural boat covers, however, the impact of these rule amendments will be similar to private property owners in that they will provide regulatory clarify in the permitting process.

Division of Coastal Management (DCM):

As these rule amendments clarify the permitting of structural boat covers under the existing regulatory framework for boathouses, the Division anticipates an increase of \$10,000 in permit fees (50 permits per year at \$200 fee). The Division will also benefit from regulatory clarity when advising property owners of rule requirements.

Proposed Amendment to 15A NCAC 7H .0208 (b)(6) – Piers and Docking Facilities

- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
 - (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
 - (C) Piers and docking facilities over coastal wetlands 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;
 - (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water and covering only 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, except that structural boat covers utilizing a frame-supported fabric covering can be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;
 - (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
 - (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
 - (G) Pier and docking facility length shall be limited by:
 - (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
 - (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
 - (I) 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 or docking facility and the adjacent property owner's areas of riparian access. 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 properties, 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. The minimum setback 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. If the

adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) 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 shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

- (J) 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 dock or pier 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.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

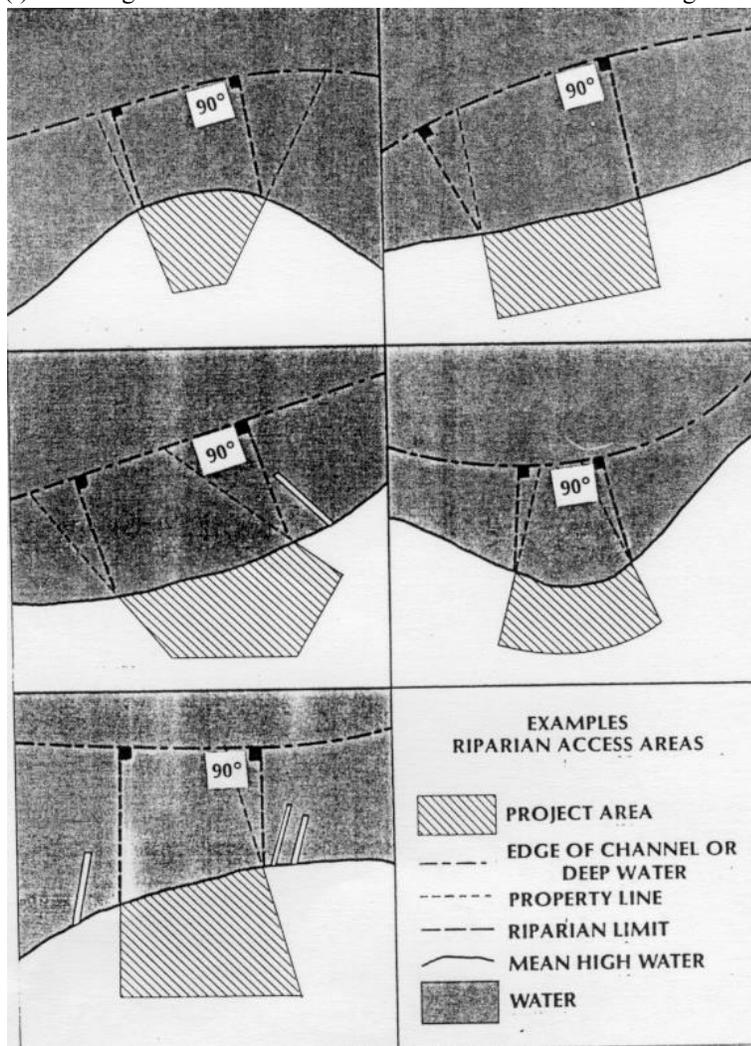
- (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
- (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar 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 as determined by the Division of Coastal Management. 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 that 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 under the general permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.
- (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 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; and
 - (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure as determined by the Division of Coastal Management.
- (i) Floating piers and floating docking facilities located in Primary Nursery Areas, 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.
- (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 Paragraph (d) 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 ~~ø~~ 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 to the Normal Water Level or Normal High Water 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. Structural boat covers, utilizing a frame-supported fabric covering, can be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls.
- (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 of 1899 (33 U.S.C. 403).
- (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 this Paragraph 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 website at <http://www.nccoastalmanagement.net>. 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 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, 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 not be authorized under the general permit set forth in this Section.

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. August 1, 2014; July 1, 2009; April 1, 2003.