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# Private Recreational Dock Management in Georgia

HISTORICAL OVERVIEW

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## Background

Private Recreational Docks (PRD), single and multi-family, have been exempt from permitting under the Coastal Marshlands Protection Act (OCGA 12-5-295(7) -(7.1)) since 1992 and 2008, respectively. Rather, they are regulated under authority delegated by the Governor to the Department to manage tidal areas of the state (OCGA 50-16-61) via a Revocable License (RL) which licenses the use of state-owned tidal waterbottoms for a specific purpose.

The US Army Corps of Engineers (Corps) also regulates PRDs under Section 10 of the Rivers and Harbors Act (navigation) and Section 404 of the Clean Water Act (dredge or fill of wetlands). Beginning in the early 1980's, the Corps delegated its dock permitting authority to coastal county governments through General Permits (1981-1986) and Regional Permit (RP) 83 (1986-1995). These permits were superseded in 1996 when the Corps issued the first Programmatic General Permit 0083 (PGP83), through which they delegated their federal permitting authority to DNR which required a RL to be issued by CRD. PGP83 included standards for dock size, construction, etc., which were maximum criteria that CRD could permit on behalf of the Corps. The standards were based on permit applications received by the Corps in previous years such that the majority, if not all docks, would fit those standards.

A state moratorium on dock construction was implemented for nearly a year, somewhere between 1995 and 1999, in response the construction of very large docks permitted by the Corps outside of PGP83 (e.g., too large to conform to the delegated permitting authority standards) without restrictions on size or location. Applicants were using their Corps permits to 'force' CRD into approving larger than PGP83 docks.

In 2001, the Corps issued a new PGP83 containing size standards that increased allowable dock size by nearly 65%, notably increasing the sizes of fixed decks and the boat hoist. This, in addition to a rapid increase in the number of dock applications received throughout the coast, prompted CRD to undertake the development of dock standards that the State would authorize under its RL authority and mirrored in PGP83.

In 2007, CRD and the Corps worked collaboratively to put forth a new PGP83 with standards deemed appropriate by the State, including limitations on walkway length and total area, along with credits for use of grated decking, and a reduced total area for fixed decks. These standards were supported by a concurrent effort underway for the regulation of marinas and community docks where such standards were debated by a stakeholder committee. The intention of the 2007 PGP83 was to reduce the potential for a private recreational dock to be *larger* than a community dock.

In 2007, the Georgia House stood up a Single-Family Dock Application Process Study Committee, the result of which supported the passage of HB68 to provide an exemption in the CMPA for multi-family docks (OCGA 12-5-295(7.1)) enabling one dock to serve up to 4 riparian lots. The new exemption codified the responsibility of the department to determine the size of the multi-family docks.

CRD recommended modified PGP standards again in 2012 to reduce the credit for use of grated decking materials on walkways and to further reduce the maximum size of fixed decks from 400 to 300 square feet. Based on research, public input, and direct experience of CRD staff, the PGP standards were again modified in 2017 to eliminate the grated materials credit for walkways altogether and to increase the allowable area for floating docks based on applicant requests and the sizes of commercially available floating dock components. The PGP83 standards adopted in 2017 have been in place ever since. It has

been CRDs long standing practice to authorize PRDs in conformance with the standards presented in the PGP83.

In 2022, the Corps chose not to reissue PGP83, resulting in a dual federal/state permitting process for PRDs. The Corps no longer has size or location standards for docks except that they must not impede navigation. In the absence of the PGP83 or any other standards of the Corps, CRD adopted a written policy to guide how it would continue to issue or deny RLs for PRDs based on former PGP83 standards and a decades-long practice.

### **Related Authorities, Legal Opinions, Decisions, Advice**

- 1980: Opinion Attorney General 80-130– right of access to navigable water does not include the right to wharf out or construct docks and piers on State-owned waterbottoms.
- 1993: Attorney General Opinion 93-25 – Finds the extension of property lines method of allocating the use of State-owned waterbottoms may be generally acceptable, but rigid adherence to such a policy when it denies deep water access to a riparian or littoral owner, may cause inequitable results.
- 1995: *Dorrah v. McCarthy* – Supreme Court affirmed DNR state exercised its discretion reasonably when it adopted an equitable approach in apportioning use of its tidelands among riparian owners on the curving shoreline, thus also affirming a DNR policy change. Discovery procedures revealed the policy change was in response to AG opinion provided at request of the Commissioner. This case affirmed the DNR’s practice of equitable apportionment of public trust water bottoms to the high-water mark on “curved” waterways.
- 1997: Georgia Coastal Management Act (12-5-230 et seq.) – directs department to prepare and administer the Georgia Coastal Management Program, to monitor and inform local, state and federal agencies concerning all rules, regulations and orders upon which the program is based (to include CMPA, SPA, PTA and delegated RL authority), to exercise all incidental powers to carry out the part, and to promulgate rules and regulations for implementation of the program.
- 2008: CMPA Amendment, OCGA 12-5-295(7.1) – exemption for multi-family docks to be constructed “...in a size to be determined by the department...”
- 2017: *C&E Enterprises (Marshlick) v. DNR/CMPC* – Superior Court of Fulton County upheld CRDs practice of determining jurisdiction under the CMPA based on site conditions found on the date of the visit and establishing a “line of record” for permitting and enforcement purposes.

### **Dock Standards: Science and Assessments**

Beginning around 2004, CRD began to actively recruit science and advice related to dock standards. The proliferation of private recreational docks had become a concern for states across the southeast related to the cumulative environmental impacts of docks on public trust resources and carrying capacity of marshlands and waterways.

- 2003: NOAA and Coastal States Organization aided in conducting inventories of residential dock and pier regulations in FL, GA, SC and NC.
- 2008: CRD conducted an additional and exhaustive assessment of dock standards used by other states including FL, SC, NC and VA.

CRD, NOAA and academic partners worked to identify existing research related to docks (private, commercial, marinas, etc.) for use in development of standards for both private recreational docks and marinas and community docks. Limited science was available that addressed some of Georgia’s primary concerns, specifically cumulative shading impacts and the effect of docks on the accumulation of marsh wrack. CRD funded, through the Georgia Coastal Management Program, several key studies to fill in critical gaps in knowledge.

#### Research in the development of dock standards:

- Science & Management of Docks and Piers (2003-2004, R. Kelty NOAA National Centers for Coastal Ocean Science (NCCOS), multi-state scope)
  - o Scienced-based decision support tool for small dock management; environmental and aesthetics
    - Impacts to vegetation (walkway shading)
    - Contaminants (leachate from pilings)
    - Associated boating usage
    - Impacts to navigation/riparian uses (extension into waterway, riparian rights, navigation between docks)
    - Aesthetics/quality of life issues (based on South Carolina survey, circa 2001 of dock owners)
- Contamination of saltmarsh sediments and biota by CCA treated wood walkways (2001)
- GIS and field-based analysis of the impacts of recreational docks on the saltmarshes of Georgia (2004, C. Alexander)
- Cumulative impacts of dock shading on *Spartina alterniflora* in South Carolina estuaries (2004, F. Holland and D. Sanger)
- Visual impact assessment of small docks & piers: theory and practice (2005, S.Bliven and R.Kelty, NOAA NCCOS)
- Quantifying the ecological significance of marsh shading: the impact of private recreational docks in coastal Georgia (2006, C. Alexander)

#### **Standards for Private Recreational Docks (Per CRD SOP, 2022)**

Walkway Length and Width: 6ft. wide max./1,000ft. long max./3,000sq.ft. total area maximum

- PRD standard since 2012
- Consistent with marina and tier 3 community dock standards, former PGPs
- Standard was recommended by:
  - o CMPC (2006, 2009)
  - o Marina, community and commercial dock stakeholder group (2005-06)
  - o Marine Facilities Public Task Force (1990s)
- Consistent with South Carolina maximum length; far exceeds standards in FL and NC (500ft.)

Fixed Deck: 300sq.ft maximum

- PRD standard since 2012
- Less than Tier 1 and Tier 2 Community Docks
- Prior to 2007, this standard was set by the Corps, not CRD, based on applicant requests for non-PGP83 compliant docks, 1996-2006
- Consistent with FL, NC, SC which have varying standards.

Floating Dock: 600sq.ft single family; 1,000sq.ft multi-family

- PRD standard since 2017 when it was increased to 600sq.ft./1,000sq.ft.
- Jet docks do not count if located per CRD policy.
- Consistent with SC, less restrictive than FL, NC

Boat Hoist(s): one 16ft. x 30ft. w/catwalk; additional hoist considered when justified.

- PGP standard since 2001
- Jet docks do not count as boat hoists
- Consistent with FL, NC, SC

Extension into Waterway: 40ft. maximum or max 25% of waterway (MLW to MLW)

- PGP standard since 1996
- Consistent with FL, NC, SC

Extended Property Lines/Dock Corridors:

- Minimum 10ft. from extended property lines/dock corridors
- Maintains navigation between docks

<i>State</i>	<i>Lot Size Min</i>	<i>Walkway Max</i>	<i>Fixed Deck Max</i>	<i>Floating Dock</i>	<i>Channelward Extension</i>	<i>Boat Hoist(s)</i>	<i>Total Area</i>
GA	50ft. riparian frontage	<u>length</u> : 1,000ft <u>width</u> : 6ft. <u>area</u> : 3,000 ft <sup>2</sup>	300 ft <sup>2</sup> - may be partially 1/3 walled, covered.	600 ft <sup>2</sup> . single 1,000sq.ft. multi-family  jet docks don't count toward total under certain conditions	40' from mlw or 25% of waterway, whichever is less	yes: 1-16x30ft, 3x30 catwalk; 2 w/ proof of registration/bill of sale larger sizes considered upon proof of larger boat	total, including terminal end: 4,470 ft <sup>2</sup> (includes 1 hoist & catwalk)
Other: roof 12ft high, w/eaves 18in. past edge of fixed deck. 10ft min off extended property lines							
SC	75ft. for single family; 50ft for shared dock	<u>length</u> : 1,000ft inc. all structures (deck & floating docks, etc.) <u>width</u> : 4ft max <u>area</u> : limited by total walkway length restriction	Yes, covered, no enclosed, no 2 <sup>nd</sup> story	Based on creek width: <u>&gt;20ft</u> : no docks <u>20-50ft</u> : fixed decks and floats=120sq.ft. <u>51-150ft</u> = 160sq.ft <u>&gt;150ft</u> = 600sq.ft.  Jet docks count toward total allowable area		Yes; smallest hoist for purpose. 1 hoist per single family dock.	Total max area is limited to total dock walkway length restriction + creek size ft <sup>2</sup> restrictions. Does not include hoist.
NC	30ft	<u>length</u> : up to 100ft to reach edge of veg., or up to 400ft only to access deep water at rate of 1ft/100ft of pier <u>width</u> : 6ft. <u>area</u> : no max*	400 ft <sup>2</sup> , only if lot size is >= 75ft. frontage, roofed, partially ½ walled, 12ft. high max., no 2 <sup>nd</sup> story	400 ft <sup>2</sup> max. Permit exemption for anything <200sq.ft.  Jet docks are considered boat lifts and count towards total allowable.	25% of water body measured from grass to grass	Yes, 400 ft <sup>2</sup> max for all hoists/lifts Up to 2 hoists; jet ski lifts count.	2 boats max or req. a major permit  total area: no max; limited by pier length
FL	65ft.	<u>width</u> : 6ft. max or 4ft. in aquatic preserves	Area is included in maximum for terminal end (including Floating Dock and Boat hoist): 1,000ft	Fixed deck and terminal end not to exceed 1,000 ft <sup>2</sup>  Jet docks up to 500 ft <sup>2</sup>	none for single family; 25% waterway for multi-slip docks; 25ft. seaward from a bulkhead	Yes for single and multi-family docks (equiv to GA Community docks)	total area (inc. walkway and terminal end) = 2,000 ft <sup>2</sup>

\*NC calculates area of a dock to include walkway, terminal end including floating docks

Context:

NC: concerned with cumulative impacts and impacts to SAV, shellfish resources

SC: standards minimize impacts to habitat from leachate, shading, erosion/turbidity caused by prop

FL: concerned with adverse impacts to SAV, mangroves and marshes due to shading/fill; loss of ESA due to shading of seagrass and increased boat activity; impacts to upland nesting habitat and shellfish resources; degradation of water quality (leachate from pilings); prop dredging resulting from dock use; and archaeological/historic resources

