

Alternative to Current Freshwater Dock Permitting Requirements

The purpose of this discussion is not to identify items for inclusion in the registration process currently proposed under SB627 relative to repair of existing docking structures. This goal of this discussion is to consider possible future processes that might replace the current freshwater dock permitting process.

Basis for current permit process

Current dock permitting is administered under RSA 482-A, the Wetlands Protection Act. When a docking structure is approved it receives a Wetlands and Non-Site Specific Permit.

all docks to permitting → **Chapter 482-A, Fill and Dredge in Wetlands Section 482-A:3 Excavating and Dredging Permit; Certain Exemptions.** (a) No person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department. Unless otherwise specified in rules adopted by the commissioner pursuant to RSA 482-A:11, any person seeking to obtain a permit shall submit to the department:

The NHDES Wetlands Bureau has an agreed State Programmatic General Permit (SPGP) with the US Army Corps of Engineers (USACoE). The SPGP allows holders of NH Wetlands Permits to avoid the need to obtain a separate Individual Permit from the USACoE. In order to maintain the SPGP NHDES Wetlands permitting requirements must meet or exceed the USACoE requirements to obtain an individual permit.

Structures eligible to be removed from the current process

Not all structures installed in public waters need USACoE approval and therefore do not need to meet the standards of NH's SPGP with the USACoE.

✶ Structures that meet the following criteria are exempted by the USACoE:

- The structure is within a waterbody that is located completely within a single state.
 - Structures on rivers such as the Connecticut and lakes that cross state lines such as Monomonic or Great East Lake would not be eligible.
- The structure not include fill in public waters.
 - Breakwaters and structures supported by cribs which use fill in structural supports would still require some form of Wetland Permit.
Pilings ≠ fill
- The construction of the structure does not require dredge or the discharge of fill even if impacts are temporary.
 - Discharge of fill includes turbidity generated during construction.
- The structure cannot be in a wetland.
 - This includes areas of dominant aquatic vegetation that are contiguous to open water portions of lakes.

Dredge, fill, and discharge of fill still requires federal approval under either the Clean Water Act, the Rivers and Harbors Act of 1899, or both. Therefore, these structures will still need some form of Wetlands approval to come under the NH SPGP.

Structures on intrastate waters that do qualify for an alternative process include:

- Seasonal docks (both piers and wharves)
- Piling supported docks (both piers and wharves)
- Watercraft lifts
- Seasonal canopies

Goals for the new process(es)

- Less paperwork
- Reduced review times
- Improved records on structures existing within public waters
- Reduced time spent resolving compliance issues / disputes
- Improved ability to provide information to the public
- Provide opportunity for commercial use structures

Requirements for implementation

- User fees adequate to maintain program viability
- Mandatory participation not voluntary

New process type and law changes possibly required

These structures could be authorized using any number of document types: permit, license, registration, lease, etc. However, it will require a legislative change to make it clear that the authorizing document is separate and distinct from the "Wetlands Permit" described in RSA 482-A:3.

The statutory language describing the alternative, new, process for authorizing the qualifying docks could still be located within RSA 482-A, perhaps in (a) new section added to the end of the current chapter.

The jurisdiction established under RSA 483-B, the Shoreland Water Quality Protection Act does not currently extend into the water. Transferring dock regulation to the Shoreland Program will require the modification of Shoreland jurisdiction.

Multiple processes needed. What should be set in law and what should be by rule?

- Simple process for most facilities.
 - Structure limits
 - Size measured in square feet
 - Size is related to the amount of frontage
 - Maximum length from shore?
 - Maximum width

- Minimum width
 - Setbacks to property line
 - Just seasonal or possibly permanent
 - Height limit?
 - Land based activity limits
- Application requirements
 - Electronic filing?
 - Application form
 - Plan
 - Quality of plan to be accepted
 - Details to be shown on the plan
 - Construction detail indicating no dredge or fill
 - Photos
 - Evidence that there are no wetlands on site
 - Proof of ownership
 - Location information
 - Abutter info?
 - Fee structure?
 - License, registration, or permit period of effectiveness
 - What is it called?
 - How long is it valid?
 - Transferable or not?
 - With if structures installed are not compliant with authorization?
- Renewal process
 - Notification of pending expiration to be sent?
 - Renewal requirements
 - Completed form
 - Plan
 - Perhaps reference to plan on file
 - Photos documenting continued compliance
 - Fee
- Comprehensive process for non-standard projects
 - Structure limits / construction criteria
 - Maximum length
 - Pier widths
 - Slip density
 - Property line setbacks
 - Permanent vs seasonal
 - Safety / navigation review
 - Application requirements
 - Plans
 - Fee structure

- Navigational impacts assessment
- Abutter impact assessment
- What else?
- What will the review and approval criteria be?

- License, registration, or permit period of effectiveness
 - What is it called?
 - How long is it valid?
 - Transferable or not?
 - With if structures installed are not compliant with authorization?

- Renewal requirements
 - What level of scrutiny will be given to these? Is renewal automatic?
 - Completed form
 - Plan
 - Perhaps reference to plan on file
 - Photos documenting continued compliance
 - Fee

- Facilities that require USACoE approval
 - Interstate waters
 - Breakwaters
 - Crib supported structures
 - Dug-in boathouses

For Discussion Only