

# SOUTHERN ENVIRONMENTAL LAW CENTER

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November 7, 2016

## *Via U.S. Mail and Email*

Spud Woodward  
Director  
Coastal Resources Division  
One Conservation Way  
Brunswick, GA 31520  
Attn: Doug Haymans  
*doug.haymans@dnr.ga.gov*

### **Re: Proposed Rules governing private recreational docks**

Dear Mr. Woodward:

The Southern Environmental Law Center submits these comments regarding the Department of Natural Resources' (DNR) proposed rules governing private recreational docks on behalf of St. Marys Earthkeeper, Altamaha Riverkeeper, One Hundred Miles, Ogeechee Riverkeeper, and St. Marys Riverkeeper. We offer these comments in response to DNR's March 25, 2016, public notice announcing the proposed rules.

As DNR states in its public notice, the purpose of promulgating Chapter 391-2-1 is to "codify the standards and conditions for issuance of a revocable license authorizing construction, maintenance, or modification of private recreational docks located over state-owned tidal water bottoms and to provide penalties for non-compliance with these standards and conditions." We applaud DNR for advancing this rulemaking. The final rules will bring clarity to the regulation of private recreational docks and provide additional protections to the Georgia marsh.

In addition to offering our support to DNR in finalizing these rules, we offer some suggestions to clarify and tighten the rules still further. While property owners should be given access to the marsh and its tidal creeks, this access should not come at the expense of other Georgians who wish to enjoy those same resources.

### **Background**

The Georgia coast is home to over 162,000 hectares of salt and brackish water marsh.<sup>1</sup> This marsh stretches the full length of the coast. Although the value of these wetlands is not easily calculated, it is clearly substantial and comes in many forms.

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<sup>1</sup> Clark R. Alexander and Michael H. Robinson, GIS and Field-based Analysis of the Impacts of Recreational Docks on the Saltmarshes of Georgia, 3 Final Report, July 15, 2004.

The health of Georgia's coastal economy in large measure can be tied to the health of the marsh. Millions of tourists visit Georgia's eleven coastal counties each year, attracted by the exceptional marsh vistas our coast provides. The fishing industry is dependent on the marsh too since the vast majority of fish and crustaceans that make up the Georgian seafood catch spend a portion of their lives in the marsh. The impact of tourism and fishing alone on the coastal economy is significant.

In 2012, Georgia's coastal economy supported nearly 24,000 jobs, provided residents with nearly \$600 million in wages, and contributed more than \$1.2 billion to our state's economy.<sup>2</sup> The tourism sector alone contributed more than \$518 million to Georgia's economy and was responsible for employing nearly 15,000 Georgians.<sup>3</sup> The fishing and seafood industry made a significant impact on the coastal economy too by employing almost 1 million people and contributing \$130 million to the state's economy.<sup>4</sup>

The marsh also helps protect the coastal economy in other ways. Had it not been for the Georgia marshes, Hurricane Matthew would have caused significantly more damage to our coastal communities than it did. Marsh reduces the intensity and size of storm surges. A study of the damage that Tropical Storm Sandy caused concluded that the coastal wetlands in the area most hard hit by Sandy reduced flood damage by \$625 million.<sup>5</sup> In general, wetlands typically reduce flood damage to properties by 10 percent on average in the areas where they are located.<sup>6</sup> And as coastal development increases, the benefit of surge protection will also increase.

The value of marsh-front property, due to its appeal, will also increase as the availability of marsh-front property decreases over time. The coast's three-quarters of a million residents will benefit from such property value increases whether they live directly on the marsh or not. And while the property values along the coast increase, the current residents will continue to enjoy the beautiful vistas, outdoor activities, and jobs the marsh supports.

The overall coastal environment too is tied to the health of the marsh. Georgia's tidal marshes are among the most productive ecosystems in the world.<sup>7</sup> In addition, they serve as essential habitat for a host of marine and intertidal species such as bottle nosed dolphins, royal terns, and the occasional manatee.

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<sup>2</sup> Charles S. Colgan, *The Economic Effects of Outer Continental Shelf Oil and Gas Exploration and Development in the South Atlantic Region: Issues and Assessment*, Appendix, Nov. 2015.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Siddharth Narayan, How Much do Wetlands Reduce Property Damage During Hurricanes?, Oct. 24, 2016, <http://blog.nature.org/science/2016/10/24/how-much-do-wetlands-reduce-property-damage-during-storms-and-hurricanes/>, (last viewed on Nov. 7, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> Clark R. Alexander and Michael H. Robinson, GIS and Field-Based Analysis of the Impacts of Recreational Docks on the Saltmarshes of Georgia, Final Report, 3, July 15, 2004.

But Georgia's marshes, as pristine as they appear, face considerable stressors, which are taking their toll. One recent study has concluded that Georgia's marshes lost 35 percent of their biomass during the period from 1984 to 2011.<sup>8</sup> The authors of the study found that much of this change could be attributed to increased periods of drought and increasing temperatures linked to climate change.<sup>9</sup> Other anthropogenic causes could also have contributed to this significant decrease in marsh size. As the coast becomes more and more urbanized, increased amounts of storm water and waste water pollutants flow into the marsh. The banks of many tidal creeks are suffering from increased rates of erosion, some of which could be exacerbated by boat wakes. The dredging of boat slips and channels can also destroy marsh. Regardless of the cause of Georgia's shrinking marsh, it is important that we limit any additional stressors as much as possible.

The construction of boat docks is one of those added stressors. Docks destroy healthy marsh by shading the marsh grasses below them. The area below a dock walkway will typically have 56 percent less marsh vegetation than unshaded marsh growing immediately adjacent to the walkway.<sup>10</sup> The effect on the marsh ecosystem can also be significant. As one study revealed, if docks were built everywhere that dock regulations allow, these docks could cover 4-6 percent of Georgia's marsh.<sup>11</sup> According to the study, this could have a significant impact on the general health of the marsh.<sup>12</sup> As the number of docks on the coast increases, so too does the impact to the marsh. And as development rebounds on the coast following the 2008 recession, the number of dock permit applications is likely to rise at a comparable clip.

DNR is wise to promulgate these private recreational dock rules now rather than wait until development pressures and potential resistance to them become elevated. DNR's authority to develop such regulations is clear. In addition to O.C.G.A. §§ 12-2-4<sup>13</sup> and 12-3-32,<sup>14</sup> which DNR relies on to promulgate these rules, DNR also has authority to do so under O.C.G.A. § 50-16-61. This latter provision states as follows, "The Governor shall have general supervision over all property of the State, with power to make all necessary regulations for the protection thereof, when not otherwise provided for . . ."<sup>15</sup> The Georgia Supreme Court held in 1980 that this authority could be used to uphold rules regarding revocable licenses.<sup>16</sup>

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<sup>8</sup> John P.R. O'Donnell and John F. Schalles, *Examination of Abiotic Drivers and their Influence on Spartina alterniflora Biomass over a Twenty-Eight Year Period Using Landsat 5 TM Satellite Imagery of the Central Georgia Coast*, 8(6) Remote Sens., 2016.

<sup>9</sup> *Id.*

<sup>10</sup> Clark R. Alexander and Michael H. Robinson, GIS and Field-Based Analysis of the Impacts of Recreational Docks on the Saltmarshes of Georgia, Final Report, 37, July 15, 2004.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> O.C.G.A. § 12-2-4 (a) provides that DNR "shall make investigations of the natural mining industry and commercial resources of the state and shall take such measures as it may deem best suited to promote the conservation and development of such resources." *Id.*

<sup>14</sup> O.C.G.A. § 12-3-32 (10) provides the DNR has the authority, "[t]o establish and, from time to time, to alter rules and regulations governing the use, occupancy, and protection of the land and property under its control and to preserve the peace therein." *Id.*

<sup>15</sup> O.C.G.A. § 50-16-51.

<sup>16</sup> *Rolleston v. State*, 245 Ga. 576, 581 (1980).

## Comments

### 1) **Certain principles about property ownership should be embodied in the final rules.**

In the absence of a confirmed King's Grant—of which there are very few—the state owns the tidal water bottoms, which includes the marsh. The state holds these marshlands in trust for the citizens of Georgia. In this capacity the state is authorized to impose reasonable restrictions on the use of the marsh to ensure that the enjoyment of the marsh by riparian land owners does not trump the enjoyment of the marsh by all others. If the state chooses to allow private docks to be constructed, it can limit the size of those docks. If these limitations make it impossible for riparian land owners to build docks to the dimensions that they would like, they must still abide by the restrictions. And if the restrictions prevent such land owners from building a dock at all, the same is true. In short, those who own land adjacent to the marsh do not have an absolute right to the dock of their choice.

Like other public lands, the marsh benefits all Georgians. If it were not for the marsh, for instance, Hurricane Matthew would likely have wreaked far more havoc with the coastal communities than it did. Similarly, if the marsh were significantly damaged, the sea food stocks that are harvested and enjoyed along the coast could be severely diminished. And it is because of the aesthetic appeal of the marsh that many tourists visit and enjoy the Georgia coast.

### 2) **The final dock regulations should be structured in such a manner so as to encourage the use of marinas, community docks, and multi-family docks over single-family private docks.**

Those who live on or near the marsh should have access to the marsh and to the open waters beyond. Yet at the same time, as described above, docks built over the marsh have significant impacts on the marsh. Therefore, DNR should build appropriate incentives into the proposed rules to encourage Georgians to use existing marinas, community docks, and multifamily docks before seeking permits to build new single-family docks.

One approach to creating such incentives is to set width and length limits in a tiered manner. DNR used such an approach when it fashioned the community dock rules in 2009. In those regulations, the length of Tier 1 crab docks is limited to 500 feet.<sup>17</sup> Also, such piers may not be any wider than 4 feet.<sup>18</sup> A Tier 2 community dock walkway can be no longer than 750 feet, no wider than 6 feet, and have a foot print of more than 3,000 square feet.<sup>19</sup> The walkways for Tier 3 community docks and marinas have the same limitations as Tier 2 community docks except such walkways can reach up to 1,000 feet in length.<sup>20</sup> For all of the dock walkways, the

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<sup>17</sup> Ga. Reg. §391-2-3-.03 (3)(a)(11).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at §391-2-3-.03 (4)(a)(6)(by using fiberglass or steel decking materials, this number can be increased).

<sup>20</sup> *Id.* at §391-2-3-.03 (5)(a)(1); Ga. Reg. §391-2-3-.03 (6)(a)(2).

size of the dock walkways can be increased if certain alternative decking materials are used instead of the standard wood decking as described in comment 5 below.

This tiered approach is designed to encourage applicants to construct shorter and narrower docks. DNR should apply this approach in the context of private recreational docks to encourage private property owners to use existing marinas and community facilities or join with neighbors to build community or multifamily docks instead of building single-family docks.

We propose that DNR adopt the same size limitations it created for Tier 1 crab docks for single-family private docks. Those restrictions would reduce the length of such docks from the 1,000 feet proposed to 500 feet and limit the width of such docks from the 6 feet proposed to 4 feet. If a 4 foot wide walkway is suitable for a Tier 1 community crab dock, it certainly should be sufficient for a single family. DNR should also reduce the size of the fixed decks and floating docks of single family docks from the proposed 300 square feet to 200 square feet. Many decks built on land are less than 300 square feet in size; DNR should not permit such large structures to be constructed over state water bottoms when only one family will enjoy them. The amount of use they would receive would not outweigh the amount of harm they would cause to the marsh and to those using the marsh. Also, the proposed rules make an allowance for applicants to build docks that would accommodate boats 30 feet long. Such large craft should be kept at a marina and not be allowed to block the view of others who are enjoying the marsh or who are attempting to navigate tidal creeks.

We also propose that DNR limit the length of multi-family dock walkways to 750 feet to match those of Tier 2 community docks. Since more than one family may be using the dock simultaneously, a wider walkway than the size permitted for a single-family dock should be allowed. We propose a width of 5 feet. In line with these reductions, we propose that the overall footprint of the walkway be reduced to 2,250 square feet. We also propose that the fixed deck and floating dock requirements be reduced to 250 feet and 600 square feet respectively. It is unlikely that a multi-family dock will be servicing all the families that share the dock at the same time, so it does not seem appropriate to allow a 1,000 square foot floating dock or a fixed deck of 300 square feet.

**3) The cumulative impacts of all docks should be taken into account in any dock regulation.**

As explained above, considering the amount of marsh that is growing along the Georgia coast, the impact of a single dock on the overall appeal and health of that marsh expanse is limited. However, there are areas along the coast that are being impacted by dense clusters of docks. The additive effect of such pockets of docks can ruin the aesthetics of the tidal creeks and rivers where they are found. Tourists and residents intent on enjoying the coastal waterways often steer clear of such areas.

As a result, DNR should consider the cumulative impact of docks on the marsh on a geographic basis. Where docks are already clustered, DNR should strongly encourage dock

permit applicants to explore whether local marinas, community docks, and multifamily docks are available and document that they have done so. If those avenues are unavailable, DNR should deny the permit altogether if the cumulative impact of the dock would be unacceptable in the immediate area where it is being proposed. With this in mind, DNR should require permit applicants to provide a Google Earth image of the area surrounding the proposed dock location to show whether other existing docks are located nearby. DNR should then take such information into account in deciding whether to grant a dock permit or not. One approach to doing so might be for the DNR to compare the current marsh line around the existing docks with a historic marsh line to determine whether the docks in the area have caused a general retreat of the marsh surrounding them in addition to reductions of marsh biomass directly under the docks.

**4) DNR should not permit applicants to bridge tidal creeks suitable for a dock in order to access deeper water.**

In some cases, property owners intent on reaching deeper water for large boats have bridged tidal creeks that were suitable for constructing a dock. This practice should not be allowed. DNR should include a provision in the final rules that clearly states that applicants will not be permitted to bridge a tidal creek that is of adequate size to construct a dock. DNR should include in the final rules a provision that provides clear guidance on the size of tidal creeks that should not be bridged.

**5) We support DNR's decision to drop the arbitrary alternative material provision contained in the Corps of Engineer's Programmatic General Permit for Docks.**

The Corps of Engineers' programmatic general permit (PGP) for docks contains a provision that would allow property owners to exceed the width and length limits imposed by the PGP dock regulations if they agree to use decking materials made out of fiberglass, plastic, or steel on dock walkways. The concept behind this provision is that these alternative materials are designed to allow more sunlight to reach the shaded area beneath dock walkways, and therefore, property owners using these materials should be given up to a 50 percent credit towards the walkway width and length restrictions. A recent study has demonstrated these materials do not allow sufficient sunlight to penetrate through them to warrant a credit of any kind.<sup>21</sup>

It is appropriate for DNR to diverge from the PGP on this credit issue. DNR's rules should always reflect the latest scientific research. When the PGP is reauthorized, DNR should remove the credit provision from that permit as well.

**6) The state should include a condition in all dock permits that it is the responsibility of dock owners to remove any marsh wrack trapped by their docks.**

Under certain conditions, marsh wrack can become trapped next to docks that extend into the marsh. This wrack can at times build up to such an extent that it obstructs neighboring

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<sup>21</sup> Clark Alexander, Field Assessment and Simulation of Shading from Alternative Dock Construction Materials, Final Report, Mar. 18, 2012.

property owners from accessing the marsh in front of their properties. In addition, when it decays, marsh wrack can give off an objectionable odor. Because wrack can be a nuisance to adjacent property owners and can damage the marsh beneath it, DNR should require that any private recreational dock permit issued contains a condition that requires the permit recipient to remove any marsh wrack that builds up in front of the shoreline of any neighboring property owner. And DNR should require that this removal be conducted in such a manner that no additional damage is done to the marsh.

**7) DNR should only grant dock permits to property owners who own lots on which a single-family detached residence could be built.**

DNR should restrict dock permits to parcels that are buildable. If a parcel is not large enough to contain a single-family detached residence based on current land use restrictions, it should not be permitted for a private recreational dock. This requirement should be made explicit in the final dock rules.

**8) Private recreational docks should be designed and constructed by qualified contractors using accepted construction techniques.**

Although the proposed rules do require applicants to provide professional drawings of the docks they are proposing to build, there is no requirement that the docks be constructed by qualified contractors using acceptable techniques. For example, had all floating docks been tethered to their fixed decks before Hurricane Matthew struck, less damage would have resulted during the storm from floating docks that had broken loose from their moorings. Similarly, contractors should not allow heavy equipment to rest on the marsh during dock construction. Docks should be built from the structure itself or from barges to prevent the marsh from being scarred.<sup>22</sup>

Thank you very much for the giving us the opportunity to comment on this important rule. Should you have any questions concerning these comments, please contact me at [bsapp@selcga.org](mailto:bsapp@selcga.org) or at 404-309-3197.

Sincerely,



William W. Sapp  
Senior Attorney

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<sup>22</sup> Clark R. Alexander and Michael H. Robinson, GIS and Field-Based Analysis of the Impacts of Recreational Docks on the Saltmarshes of Georgia, Final Report, 37, July 15, 2004.

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