

Section 300.4. Recreational Boating Facilities

A. Definitions

Recreational boating facilities include marinas, launching ramps, residential boating facilities, recreational wharves, piers and slips, floats or floating docks, and recreational mooring areas.

1. Marina: any dock, pier, wharf, float, floating business, or combination of such facilities that accommodate five or more recreational boats.

2. Launching ramp: a manmade or natural facility used for the launching and retrieval of boats.

3. Residential boating facility: a dock, pier, wharf, or float, or combination of such facilities, contiguous to a private residence, condominium, cooperative or other home owners association properties that may accommodate up to four (4) boats.

(a) fixed terminal section: the seaward-most section of a residential boating facility which is configured as a T-section or L-section that provides access between a fixed dock and a vessel.

4. Recreational mooring area: any designated area managed by a commercial enterprise, a club, city, or town where five or more recreational craft are kept at moorings.

B. Policies

1. The Council encourages marinas to utilize techniques that make the most efficient use of space and increased demands for moorage, dockage, and storage space by considering dry stack storage, innovative slip and mooring configurations, and the like.

2. In order to limit the cumulative impacts of many individual residential boating facilities, the Council encourages the construction of facilities that service a number of users. It is the policy of the Council to manage the siting and construction of recreational boating facilities within the public tidal waters of the state to prevent congestion, and with due regard for the capability of coastal areas to support boating, and the degree of compatibility with other uses and ecological considerations. The Council shall require that a residential structure be contiguous to any shoreline site for a proposed residential boating facility.

3. The Council recognizes that the United States Coast Guard has primary authority over navigational aids and marine boating safety, and that these responsibilities are complemented by the Department of Environmental Management, local harbormasters, and public boating service organizations such as the Coast Guard Auxiliary.

4. The Council requires municipalities preparing to implement harbor management rules, regulations and/or programs relating to activities and structures in tidal waters to apply for a determination of consistency with the Coastal Resources Management Program to assure conformance between such rules, regulations and/or programs and the Coastal Resources Management Program, the Guidelines for the Development of Municipal Harbor Management Plans and the General Laws of the State of Rhode Island (see Section 300.15).

5. All persons proposing condominium, dockominium, or other forms of ownership or operation of recreational boating facilities involving multiple, cooperative, condominium or fee simple interests in ownership or operation shall submit a prospectus of such proposals to the CRMC for review of consistency with the state of Rhode Island's public trust responsibilities, Chapter 46-23 of the General Laws of Rhode Island, and the Rhode Island Coastal Resources Management Program.

6. Repair or reconstruction of all structures that are physically destroyed 50% or more by wind, storm surge, waves or other coastal processes shall require a new Council Assent. Such activities requiring a

new Council Assent shall be reviewed according to the most current applicable programmatic requirements of the Coastal Resources Management Program, its Special Area Management Plans, and/or any other appropriate CRMC-approved management plan.

7. All residential boating facilities are required to be registered by and with the Council and have posted on them a registration plate and number issued by the Council. Applicants for residential boating facilities are referred to the Council's Pre-existing Residential Boating Facilities Program for additional detailed standards of this policy and program.

8. The Council shall require persons proposing to construct new marina facilities or proposing to significantly expand existing marina facilities to undertake measures that mitigate the adverse impacts to water quality associated with the proposed activity.

9. All recreational boating facilities shall be designed and constructed to adequately withstand appropriate environmental conditions present at the site.

10. All recreational boating facilities shall be de-signed and constructed in a manner which does not impede or detract from and whenever practicable promotes public access along and to the shore.

11. The construction of marinas, docks, piers, floats and other recreational boating facilities located on tidal lands or waters constitutes a use of Rhode Island's public trust resources. Due to the CRMC's legislative mandate to manage Rhode Island's public trust resources for this and subsequent generations, the Council must assess all proposed uses of public trust lands or waters on a case by case basis, examine reasonable alternatives to the proposed activity, and ensure that public's interests in the public trust resources are protected. In assessing a proposed recreational boating facility, the Council shall evaluate the following: a) the appropriateness of the structure given the activities potential to impact Rhode Island's coastal resources; b) the appropriateness of the structure given geologic site conditions; c) the potential impacts of the structure and use of the structure on public trust resources (e.g., fin fish, shellfish, submerged aquatic vegetation, etc.); d) the potential navigation impacts of the structure and associated use of the structure; e) the potential aesthetic and scenic impacts associated with the structure; and f) the cumulative impacts associated with the increased density of existing recreational boating facilities in the vicinity of the proposed project. In considering these factors, the Council shall weigh the benefits of the proposed activity against its potential impacts while ensuring that it does not cause an adverse impact on other existing uses of Rhode Island's public trust resources.

12. It is the Council's policy to require a public access plan, in accordance with Section 335, as part of any application for a new marina, or for a significant expansion to any existing marina.

In accordance with Section 120, a variance from this policy may be granted if an applicant can demonstrate that no significant public access impacts will occur as a result of the project.

C. Prerequisites

1. Persons proposing to establish a new marina will be required to concurrently obtain a permit from the Army Corps of Engineers.

2. Persons proposing to establish a recreational mooring area are required to concurrently obtain a permit from the Army Corps of Engineers.

3. An application for a Council Assent for a marina and/or mooring area will include a map prepared and stamped by a professional engineer, land surveyor, or architect that designates the area of tidal water that will be incorporated within the marina.

4. (a) All applications for recreational boating facilities shall be initially reviewed by the Executive Director or his designee. The Executive Director may refer any such application to the Council for a hearing if based upon the application on its face a determination is made that the proposed activity warrants a Council hearing.

(b) All such applications not referred to the Council for hearing under a) above shall be referred to the subcommittee on recreational boating facilities which shall consist of at least three (3) Council members appointed by the Chairman. The Chairman shall also appoint a Chairman of the subcommittee.

(c) The subcommittee on recreational boating facilities shall, based upon the application and staff reports, make a determination that the application meets all the criteria as set out in Section 300.4.E.3 below and any other applicable Council policy or procedures. If a determination is made that all the above criteria are met within thirty (30) days of the submission of the file by the staff to the subcommittee chairman that the file is complete, the application shall be processed as a Category A application.

(d) If a determination is made by the subcommittee that all of the above criteria are not met then the subcommittee shall refer the matter to staff as a Category B application.

(e) The subcommittee shall have the authority to consider and act upon variance requests to certain standards of this section pertaining to residential boating facilities. The subcommittee shall utilize the criteria and requirements of Section 120 of this program in its evaluation of variance requests. Variances may be granted by the subcommittee to the standards listed in subsection (f) below only; variance requests to other standards of this section or to other appropriate and relevant sections of the CRMP must be made to the full Council. Variances shall not be considered by the subcommittee if there is a substantive objection, in accordance with Section 130, to the application.

(f) Variances may be granted to all of the standards contained in Section 300.4.E.3 and Section 200.2.C.3 provided engineering, biological and other appropriate concerns have been addressed except for the following: i) the subcommittee may not grant a variance to Section 300.4.E.3.j; ii) the subcommittee may only grant a variance to within 18 inches of the marsh grade standard (Section 300.4.E.3.f) provided engineering, biological, and other appropriate concerns are met; iii) the subcommittee may only grant a variance for the extension of a recreational boating facility out to 75 feet beyond MLW or up to a 50% increase beyond the 50 foot standard (Section 300.4.E.3.k) provided engineering, biological, and other appropriate concerns are met; and, (iv) the subcommittee may not grant a variance to Section 300.4.E.3(s).

D. Prohibitions

1. The building of new marinas in Type 1 and 2 waters is prohibited.

2. The building of new residential docks, piers, and wharfs in Type 1 waters is prohibited. This prohibition shall not apply to structures previously assented by the Rhode Island Department of Harbors and Rivers, the Army Corps of Engineers, or the CRMC. Additionally, in those instances where an applicant can not produce a previous assent but can demonstrate by clear and convincing evidence that a residential dock in Type 1 Waters pre-existed the formation of the Council, the Council may grant a permit issued in accordance with the CRMC's Pre-existing Residential Boating Facilities Program.

Any assent granted pursuant to this section shall be recorded in the land evidence records and is transferable to a subsequent owner or purchaser of the subject property, provided however, that all assent conditions are adhered to and the dock is removed at the termination of assent.

3. The unloading of catches by commercial fishing vessels at residential boating facilities is prohibited.

4. The building of structures that are integral to or ancillary to a residential boating facility, including but not limited to gazebos, launching ramps, wave fences, boat houses, and storage sheds is prohibited. However, the construction of boat lifts may be allowed in Type 3, 5, and 6 waters, and in Type 2 waters in accordance with the provisions of Section 300.16.

5. The discharge of sanitary wastes into tidal waters from devices other than those approved by the United States Coast Guard is prohibited.

6. In Type 2 waters, the building of private launching ramps that propose to alter a coastal feature are prohibited, except along manmade shorelines. Where a coastal wetland fronts a man-made shoreline, the building of private launching ramps shall be prohibited. This prohibition does not apply to marinas with council-approved marina perimeters.

7. New residential boating facilities are prohibited from having both a fixed terminal T-section or L-section, and a terminal float.

E. Standards

1. For marinas:

(a) Sufficient sanitary facilities shall be provided to service the patrons of the marina.

(b) Sufficient parking shall be provided for the patrons of the marina. A standard of 300 square feet is required for each parking space; the minimum requirements for the total number of parking spaces provided is one space for each 1.5 boats and one space for each 1.2 employees.

(c) Discharge of sanitary wastes to tidal waters from boats using the facility by devices other than those approved by the United States Coast Guard is prohibited.

(d) A Council Assent for a marina permits the marina operator to undertake minor repairs and alterations of approved facilities without further review, where such repairs or activities will not alter the assented design, capacity, purpose or use of the marina. For the purposes of this section, the assented design, capacity, purpose or use of the marina shall be those characteristics associated with the physical configuration or construction, numbers of vessels accommodated at in-water facilities, and nature of operation as defined in the original Council Assent, respectively. Minor repairs and alterations to in-water facilities shall include repair or replacement of dock decking or planks, replacing pilings, extensions of slips and/or finger piers within the perimeter and capacity of the marina as defined within the original Assent, or as established in paragraph (f) of this section, and other activities of a similar and non-substantial nature. Minor repairs and alterations to upland facilities may take place upon Council approval of an operations and maintenance plan as identified below at (k) and shall include grading of parking and launch ramp areas, grouting of seawalls, plumbing and electrical work, maintenance of sidewalks, fences, and walkways, flagpole installations, landscaping, signage; and other activities of a similar and non-substantial nature. Minor repairs and alterations shall not be construed to include maintenance dredging, alterations, repairs or expansion of shoreline protection facilities, bulkheads, or breakwaters or other activities subject to review under other relevant sections of this program. All minor repairs and alterations shall take place within the assented design of the marina, or marina perimeter as defined in the original Council Assent or as established in accordance with paragraph (f) of this section.

(e) In those instances where the minor repair or alteration would require the use of heavy machinery (such as a pile driver or grader), the Council shall be notified in writing at least 10 working days prior to undertaking the work. Notice of repair activities requiring the use of heavy machinery shall include the following:

i) A statement that the notice is given pursuant to Section 300.4.E.1.e;

ii) A description of the proposed repair or alteration to be performed including a statement as to the size and type of materials to be used;

iii) A copy of the original Council Assent or Division of Harbors and Rivers permit under which the proposed repair or alteration is to be performed;

iv) A copy of the site plan from the original Council Assent showing the location of the proposed

repair or alteration;

v) The name of the person on-site responsible for supervising the proposed repair or alteration;

vi) The anticipated dates on which the proposed repair or alteration shall commence and be completed.

(f) All marinas and/or mooring areas shall have a defined perimeter for in-water facilities, which shall describe and limit that area in which the repair or alteration activities described in paragraphs (d), (e) & (g) may take place. In cases where the boundaries of the water area have not been designated, the Council shall define the water area (perimeter) within which alterations and repair activities may take place, prior to the commencement of any such activities. Operators of marinas may apply to the Council for definition and establishment of this perimeter at any time. Perimeters shall be defined on the basis of in-water facilities in place as of September 30, 1971, or subsequently assented structures.

(g) Proposals for the alteration or reconfiguration of in-water facilities such as piers and/or mooring areas shall be reviewed in the following manner:

i) Alterations to the layout or configuration of in-water facilities which do not increase the number of boats accommodated shall obtain a Certification of Maintenance in accordance with the requirements of Section 300.14;

ii) Alterations which propose to increase the number of boats that may be accommodated at the in-water facilities of the marina within 25% of the capacity of the marina as defined in the original Council Assent, and do not propose to extend the facility beyond the defined perimeters (established pursuant to the original Council Assent or paragraph (f)) shall be reviewed as Category A applications. The Council's review shall establish that the alterations and/or expansion meet the 25% standard, and that the Council's standards for parking and sanitary facilities are met.

iii) Alterations which propose to increase the numbers of vessels accommodated at the in-water facilities beyond 25% of the capacity as defined in the original Council Assent, and/or extend the facility beyond the defined perimeters, or alter the purpose of the facility shall be reviewed as a Category B application.

(h) Any alterations to mooring areas shall be consistent with any CRMC approved municipal harbor management rules, regulations or programs, as defined in Section 300.15 of this program.

(i) All new marina facilities shall be required to install a marine pumpout facility. Any expansion or alteration of an existing marina facility that results in greater than or equal to 50 new slips shall be required to install a marine pumpout facility. Any expansion or alteration of an existing marina facility which proposes to increase the number of vessels accommodated at the in-water facilities beyond 25% of the capacity as defined in the original Council Assent shall be required to undertake mitigative measures. If 25% of the capacity as defined in the original Council Assent is greater than or equal to 50 slips, then a marine pumpout facility shall be required. If 25% of the capacity as defined in the original Council Assent is less than 50 slips, then the Council shall require either the installation of a marine pumpout facility or other suitable mitigation measures.

If the applicant can demonstrate that there are already enough marine pumpout facilities to serve all of the recreational boating facilities found in the region, then the Council may waive the requirement for a marine pumpout facility and require alternative mitigative measures.

All marine pumpout facilities shall be designed in a manner that serves the boating public. In addition, all marine pumpout facilities that are required by the Council to mitigate the adverse impacts to water quality associated with recreational boating shall be open for the general public's use. However, marina operators may charge a fair and nondiscriminatory fee to cover the cost of constructing and operating these facilities.

(j) All new marina facilities shall meet the setback policies and standards contained in municipal harbor management plans and/or harbor ordinances approved by the Council. However, in all cases marina facilities shall be setback at least 50 feet from approved mooring fields and three times the authorized project depth from federal navigation projects (e.g. navigation channels and anchorage areas).

(k) All new marinas and significant expansions of marinas and/or mooring areas shall have an approved operations and maintenance program for upland facilities, prepared in accordance with the most recent edition of the *Environmental Guide for Marinas: Controlling Nonpoint Source and Stormwater Pollution in Rhode Island*.

2. For launching ramps:

(a) Ramps shall be constructed at an angle no greater than 15 percent from the horizontal. Where upland modification is necessary, the slope will be created, where possible, by cutting back into the upland, rather than by placing fill on a shoreline feature. Ramps shall be approximately even with beach grade.

(b) Ramps shall extend a sufficient distance inland to prevent washout at the inland edge and shall extend a minimum of 3 feet beyond extreme low water. Single-lane ramp width shall not be less than 15 feet.

(c) Where a form of pavement is necessary in areas of unconsolidated sediment, ramps will be constructed using 6 inch by 6 inch or equivalent by a maximum of 15 feet reinforced concrete ties, connected with galvanized steel rods placed perpendicular to the slope of the ramp, and packed within the underlain by 6 inches of crushed stone. Concrete ties shall utilize an air-entraining, Type II or Type V Portland cement, or an equivalent sulfate- resistant substitute.

(d) Side slopes of the ramp (above water line) shall be constructed of sloped riprap or, if the slope permits, vegetated.

(e) See Section 300.2, "Filling, Removing, or Grading of Shoreline Features," and Section 300.7, "Construction of Shoreline Protection Facilities."

3. For residential docks, piers, and floats:

(a) Applications for all residential recreational boating facilities shall indicate all work associated with access to these structures; a bottom survey showing water-depth contour lines and sediment types along the length of the proposed structure shall also be provided and certified by a registered professional engineer. All pathways, boardwalks, and cutting or filling of coastal features shall be specified. All such work shall be in accordance with applicable standards for "Filling, Removing, or Grading" (Section 300.2) and "Residential, Commercial, Industrial, and Public Recreational Structures" (Section 300.3).

(b) Fixed structures which are for pedestrian access only shall be capable of supporting 40 pounds per square foot live load as well as their own dead weight; floating structures shall be capable of supporting a uniform 20 pounds per square foot live load, or a concentrated load of 400 pounds. A written certification by the designer that the structure is designed to support the above design loads shall be included with the application.

(c) No creosote shall be applied to any portion of the structure.

(d) A dock, floating dock or pier width shall be a maximum of 4 feet; terminal float size shall not exceed 150 square feet per recreational boating facility. Residential boating facilities may include fixed terminal (seaward-most section) T-sections or L-sections that shall not exceed four (4) feet by 20 feet, and then only in the absence of a terminal float.

(e) Flotation devices shall be securely contained.

- (f) Where possible, piers shall span coastal wetlands; when pilings are placed within coastal wetlands, only the immediate area of piling penetration may be disturbed. The stringers shall be located at least 3 1/2 feet above the grade of the coastal wetland. Construction in a coastal wetland shall be accomplished by working out from completed sections. No construction equipment shall traverse the wetland while the facility is being built.
- (g) Owners are required to maintain their facilities in good working condition. Facilities may not be abandoned. The owner shall remove from tidal waters and coastal features any structure or portions of structures which are destroyed in any natural or man-induced manner.
- (h) Float ramps and other marine appurtenances or equipment shall not be stored on a coastal wetland, shoreline embankment, or in any area designated as a buffer zone.
- (i) The use of cribs for structural support shall be avoided. The use of cribs as support in tidal waters may be permitted given certain environmental design considerations, however, in these instances the size and square footage shall be minimized and the structure can not pose a hazard to navigation. When cribs are permitted for structural support, they must be removed when the useful life of the structure has ceased (e.g. the structure is no longer used as a means of accessing tidal waters).
- (j) Residential boating facilities shall not intrude into the area within 25 feet of an extension of abutting property lines unless (1) it is to be common structure for two or more adjoining owners, concurrently applying or (2) a letter or letters of no objection from the affected owner or owners are forwarded to the CRMC with the application.
- (k) Residential boating facilities shall not extend beyond that point which is (1) 25 percent of the distance to the opposite shore (measured from mean low water), or (2) 50 feet seaward of mean low water, whichever is the lesser.
- (l) All residential docks, piers, and floats shall meet the setback policies and standards contained in municipal harbor management plans and/or harbor ordinances approved by the Council. However, in all cases residential docks, piers, and floats shall be setback at least 50 feet from approved mooring fields and three times the U.S. Army Corps or Engineer's authorized project depth from federal navigation projects (e.g. navigation channels and anchorage areas).
- (m) No sewage, refuse, or waste of any kind may be discharged from the facility or from any vessel utilizing it.
- (n) A Council Assent for a residential boating facility permits the owner to undertake minor repairs of approved facilities without further review, where such repairs will not alter the assented and/or permitted design, capacity, purpose or use of the facility. For the purposes of this section, minor repairs shall include the repair or replacement of dock decking or planks, hand railings and support, and other activities of a similar and non-substantial nature. Minor repairs do not include alterations to the approved design of the facility, expansion of the facility, or work requiring the use of heavy machinery (such as a pile driver); these activities require that a Certification of Maintenance be obtained from the Council in accordance with Section 300.14. Residential boating facilities shall be in continuous and uninterrupted use to meet this standard, in accordance with permit conditions.
- (o) Materials used for the construction of residential boating facilities shall be limited to timber. This requirement does not apply to float restraint piles or ramps used in the construction of floating docks. This requirement also does not pertain to timber connection hardware. Alternate materials may be utilized in the construction of floating docks.
- (p) The surface of the dock, pier and float shall be designed in a manner which provides safe traction and allows for the appropriate drainage of water.
- (q) Geologic site conditions shall exist which are appropriate for structural support.

(r) As part of a residential boating facility, the terminal float may be designed such that it facilitates the access of small vessels such as kayaks, dinghies, personal water craft, etc., onto the float, provided that all other programmatic requirements are adhered to. Mechanical apparatus to accomplish this shall not exceed 24 inches in height from the top of the float.

(s): A minimum depth of 18 inches of water (MLW) shall be obtained at the seaward end of the dock, floating dock or pier.