

DFW-4

Footprint/Perimeter of Existing Marina/Mooring Areas/Boat Basins

I. Summary:

The two terms “perimeter” and “footprint” are used by staff to describe the areal coverage of a marina or mooring facility in the implementation of Protection of Waters (Environmental Conservation Law Article 15) and Tidal Wetlands (Environmental Conservation Law article 25) regulatory programs, respectively. Though they seem similar, these terms speak to different areal representations of such facilities and are not interchangeable. This guidance provides clarification of these terms to ensure more consistent application under both regulatory programs.

II. Guidance:

Protection of Waters

No permit is required under ECL Article 15 (Protection of Waters) for “a docking facility providing dockage for five or fewer boats and encompassing within its perimeter an area of less than 4000 square feet;” nor for “the relocation, replacement, and/or rearrangement of floating docks, ramps, walkways and anchoring devices within the established perimeter of a docking facility or mooring area” 6 NYCRR 608.4(c)(2) and (6).

The term “perimeter” is defined as “a boundary of a docking facility or mooring area consisting of a series of connected imaginary lines on a plan or map, encompassing all related structures such as docks, bulkheads, breakwaters, pilings, piers, platforms or moorings and the travel lanes and berthing areas that function together to create a facility or area at which vessels may be docked or moored.” 6 NYCRR 608.1(m).

Note that this definition includes travel lanes and berthing areas. (See figure 1) Travel lanes should be viewed to accommodate two-way vessel traffic and would generally have an overall width of no more than 40 feet.

Tidal Wetland Program

No permit is required under ECL Article 25 (Tidal Wetland Act) for “the relocation or rearrangement of floating docks, open pile docks, and similar structures within an established marina or boat basin where such activities involve no disturbance of a tidal wetland other than removing or relocating anchors or pilings.” 6 NYCRR 661.5(b)

The term, “within an established marina or boat basin facility” means within the existing or established footprint of the facility. The term “footprint” means the limit of structures, such as docks, pilings, piers or platforms, at an established marina or docking facility excluding travel

lanes and mooring areas. The seaward limit of structures may be connected with imaginary lines as required on a plan or map, to define the limit of the existing or proposed footprint (see figure 1). An “established marina or boat basin” is a lawfully existing marina or boat basin facility with functional docking/mooring structures.

III. Purpose and Background:

Clarification on the definition and use of these terms would provide for more consistent application of the regulations among the regions.

The most common misinterpretation has been the failure to include non-structural components (i.e., travel lanes and berthing areas) in defining the perimeter of a facility. For example, certain activities proposed to be conducted at docking facilities are exempt from permitting under Protection of Waters regulations based on the facility having within its perimeter an area of less than 4,000 square feet (6 NYCRR 608.4(c)(2)). Miscalculating the area of the facility by failing to include these non-structural components underestimates the area of the facility. As a result, facilities and activities may be incorrectly exempted from permitting requirements.

The term “footprint” does not appear, and is thus not defined, in regulation. However, the term has utility, and is commonly applied by staff in the regulatory process. For example, the rearrangement of docks within an established marina is considered exempt (NPN) from permitting under the Tidal Wetland Land Use regulations (661.5 Use #18). The Department interprets “within an established marina” to mean within the existing or established footprint as described above (also see figure 1).

“Footprint” is different from “perimeter” in that it excludes exterior travel lanes and berthing areas. This is an important distinction as it can affect the Use Category of a proposed activity under the Tidal Wetland program regulations. For example, the relocation of docks beyond the existing footprint, but within the perimeter of an established marina (i.e into the exterior travel lanes), would be deemed expansion or substantial modification of the existing facility, which is a regulated activity requiring a permit under Part 661 (Use #25), even though it might be exempt from permitting under the Protection of Waters program.

IV. Responsibility:

The regional Marine Habitat Protection Units and the Division of Environmental Permits are responsible for implementing this guidance document and the DFWMR Marine Habitat Section is responsible for maintaining the document.

V. Procedures:

The regional Marine Habitat Protection Units will implement the guidance. Division of Environmental Permits will make any Uniform Procedure Act determination that is required through the use of this guidance.

VI. References:

- 6 NYCRR Part 661;
- 6NYCRR Part 608

Figure 1. Marina Footprint , Marina Perimeter and Mooring Area Perimeter

