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May 4, 2009

Tom Murray
Virginia Institute of Marine Science
Clayton House 303
Gloucester Point, VA 23062

Re: Comparative Fees for the Use of State-Owned Submerged Land by Commercial
Marinas (MASGP 09-008-06)

This product was prepared by the National Sea Grant Law Center under award number NA06OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Tom,

Please find attached our compilation of several states' comparative fees and mechanisms for the use of state-owned submerged land. The attached information is intended as advisory research only and does not constitute legal representation of the Virginia Institute of Marine Science (VIMS) or its constituents. It represents our interpretations of the relevant laws and regulations.

As we understand it, a constituent of VIMS became concerned that Virginia's fees for the use of state-owned submerged land were excessive in comparison to fees in other states. In response to that concern, the Sea Grant Law Center compiled the laws and policies of several states regarding fees charged for the use of state-owned submerged land for large marina projects. The summary below does not encompass federal, local, or state environmental permitting requirements for construction in state-owned waters.

Each state and its agencies handle the use of state-owned submerged land for commercial marinas in a different manner. Some charge royalties, while others charge impact fees.

For consistency purposes, this document employs the term "lease" to refer to the use of state owned-submerged lands.

Following the summary of state fees, we have explained how the state fees might be applied to a hypothetical development. In the hypothetical, the developer wants to build a 150-slip marina called "Sea Grant Marina." The marina will be open to the public and used primarily for recreational purposes. The developer owns the land abutting the water where the marina will be built. The marina will encroach on 150,000 square feet of submerged lands. The developer will need to dredge 20,000 cubic yards of material for the project. The boat slips are 30 linear feet.

This report was prepared using traditional legal research methods. State codes and regulations were searched using Lexis, an online legal database. State agency websites were then consulted to verify results and provide additional information on submerged land leasing programs. The applicable state agencies were contacted to gain additional information and clarify any questions.

Aside from Rhode Island, Virginia's charge for the use of submerged lands was higher than the other states. However, since Virginia's royalty payments are a one-time fee and the other states use an annual fee, the payments may be comparable to other states over time.

I hope you find this information helpful. If you would like additional information, please let me know.

Sincerely,

Terra Bowling
Research Counsel, National Sea Grant Law Center

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California

Lead agency: The California State Lands Commission (CSLC) has authority to lease lands owned by the state, or in which the state may have an interest, and which are under the jurisdiction of the Commission.¹ Public lands may be leased for several purposes “including, but not limited to, grazing leases and leases for commercial, industrial, and recreational purposes.”² Additionally, submerged lands may be granted to public entities such as cities, counties, and towns, which have the same powers of the CSLC.³ Therefore, in some cases, a lease must be obtained from a local government; however, the CSLC would still monitor the lands to ensure compliance.⁴ The CSLC grants leases on twenty year terms.

Fees: Each applicant is required to pay the CSLC’s costs of processing the application. Each applicant is required to submit a \$25.00 filing fee and the appropriate Minimum Expense Deposit. The minimum expense for a new commercial lease is \$17,500. Each applicant will also be asked to execute a reimbursement agreement to cover the total cost of processing the application, including environmental processing.

State charge for lease of submerged land for commercial marina: Upon receipt of an application to lease lands, the CSLC appraises the lands and determines the annual rent.⁵ For commercial leases, the CSLC is authorized to use any one of or a combination of the following methods: a percentage of gross income, a set return based upon a percentage of appraised land value, or the value of commodities passing over the submerged land to calculate rental rates.⁶

To determine the minimum annual rent for new commercial marinas, the CSLC multiplies a projected gross income by a rental percentage to determine the minimum annual rent that will be charged. The CSLC typically charges 5-7% of gross income for boat berthing for sites leased to commercial marina operators, with most of the leases set at 5% of gross income.⁷

To calculate the annual land rent based on gross income, the CSLC first performs a rental survey of similar size marinas in the same or similar neighborhood as the subject property to determine the average rental rate per lineal foot. The average rental rate is then multiplied by the number of slips in the proposed marina, and then multiplied by 12 months to arrive at the projected gross annual income. The gross annual income is multiplied by 5% to get the minimum annual land rent. For established commercial

¹ CAL. PUB RES. CODE § 6501 (2008).

² *Id.* § 6501.1

³ *Id.* § 6505. There are currently 85 grants, including Los Angeles, Long Beach, San Francisco, San Diego, Oakland, and Eureka. (CSLC, State Lands Commission Land Management Division Brochure (2005) available at: http://www.slc.ca.gov/Division_Pages/LMD/Documents/lmd_brochure.pdf).

⁴ *Id.*

⁵ CAL. PUB RES. CODE § 6503 (2008).

⁶ CAL. CODE REGS. tit. 2, § 2003 (2009).

⁷ Marina Benchmark report from CSLC, on file with the author.

marinas, the CSLC calculates the minimum annual rent using a percentage (usually 75%) of the average rent paid over the recent past (usually three to five years).

The California Code of Regulations authorizes the CSLC to set the annual rent at 9% of appraised land value.⁸ In calculating this, the CSLC divides the annual rent (calculated above) by 9% (administratively set rate of return) to arrive at the land value.

Commercial marina leases that address dredging include it as a permitted use. If the required dredging is significant, the CSLC usually specifies the amount of material that can be dredged. If the dredged materials are sold or used for any private or commercial use, the Commission charges the marina operators \$0.25 per cubic yard. If the material is determined to be for a public benefit, there is no charge for dredging.

Sea Grant Marina

In California, our hypothetical marina would incur the following fees:

Lease – For hypothetical purposes, the average berth rate is \$9.00.

Multiply 30 by \$9.00= \$270 per month per slip

Multiply \$270 by 150 slips = \$40,500

Multiply \$40,500 by 12 months = \$486,000 gross annual income⁹

Multiply \$486,000 by 5% = \$24,300 (minimum annual land rent)

Dredge – Either \$0 or \$5,000 (.25 multiplied by 20,000), depending on how the developer disposes the material.

Other Fees – \$25.00 filing fee

\$17,500 Minimum Expense Deposit

Total Fees – \$41,825-\$46,825

For Additional Information:

CA State Lands Commission: <http://www.slc.ca.gov/> .

Land Management Division brochure:

http://www.slc.ca.gov/Division_Pages/LMD/Documents/lmd_brochure.pdf

⁸ CAL. CODE REGS. tit. 2, § 2003 (2009).

⁹ If a rent survey indicates a vacancy rate, the estimated annual income will be reduced by vacancy percentage. In the above example if there were a vacancy rate of 10% per year, 10% of the annual income, or \$48,600, would be subtracted from the annual income estimate, resulting in an effective gross income of \$437,400.

Public Resources Code:

<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=prc&codebody=&hits=20>

Delaware

Lead agency: The Department of Natural Resources and Environmental Control (DNREC) is the lead agency in permitting commercial marinas and leasing state-owned subaqueous land. The Wetlands and Subaqueous Lands Section within the DNREC's Division of Water Resources oversees the permitting process for Delaware's waterways.

The Secretary of the DNREC has the authority to convey a fee simple or lesser interest, grant easements, or lease subaqueous lands.¹⁰ Projects on submerged lands or tidelands require a lease (renewable on a 20-year term) for the placement of any structure (dock, pier, pipeline, shoreline stabilization, etc.) or any fill placed in underwater lands channelward of the mean low water line.¹¹

In addition to applicable federal or local permits, the DNREC requires a Marina Permit for the construction of new marinas or alterations to existing marinas within the state.¹² The Department may require mitigation for marina construction requiring the use of public subaqueous lands.¹³ The Department has promulgated regulations regarding the siting, design, construction, and operation of new marinas.¹⁴

Fees: The Department is authorized to promulgate regulations setting fees for permits.¹⁵ The permit fee for "minor" marinas (5-24 slips) is \$2,000. The permit fee for a "major" marina (25 or more slips) is \$5,000. Permits for alterations are \$500 for minor marinas and \$1,000 for major.

Generally, the Department charges \$1.50 per cubic yard for the dredging of bottom material. The Department charges an annual lease fee for fill placed below the mean water line. The fees vary from \$.50 to \$3.00 per square foot depending on the size and nature of the project.

The Department also requires operations and maintenance plans for marinas. The fee for a "standard" operations and maintenance (O&M) plan is \$200. Marinas eligible for the standard O&M plan include existing marinas with 50 slips or less which do not contain fueling or maintenance facilities and smaller new marinas. A special plan (for larger marinas that include fueling or boat facilities) is \$300.

State charge for lease of submerged land for commercial marinas: At this time, Delaware does not charge rent for the lease of state-owned submerged lands. At one time, the DNREC did charge a rental fee for state owned land, but in a court case challenging the fees, a state chancery court held that the state may not impose an annual rental fee for state-owned submerged land on riparian landowners in derogation of their riparian

¹⁰ DEL. CODE ANN. tit.7, § 7203 (2008).

¹¹ *Id.* § 7205.

¹² 7-7000-7501 DEL. CODE REGS. (2008).

¹³ DEL. CODE ANN. tit.7, § 7205 (2008).

¹⁴ 7-7000-7501 DEL. CODE REGS. (2008).

¹⁵ DEL. CODE ANN. tit.7, § 7205 (2008).

rights.¹⁶ The court noted that Delaware differed from other states in that it did recognize a riparian owner's property right in a wharf built and used for commerce and navigation. The Delaware Supreme Court affirmed the decision, but upheld the state's power to charge a regulatory fee pursuant to its police power or an administrative fee to cover filing, processing, or other costs.¹⁷ The state charges a \$225 administrative fee for the lease of lands and land lease renewals.

Sea Grant Marina

In Delaware, our hypothetical marina would incur the following fees:

Lease – There would be no charge for the lease of state-owned submerged lands in Delaware.

Dredge – At \$1.50 per cubic yard, the dredging of 20,000 cubic yards of material would cost \$30,000.

Other Fees – Our 150-slip marina would qualify as a “major” marina, since it has 25 or more slips, so the permit fee would be \$5,000. The state would charge an administrative filing fee of \$225 for the lease of the submerged lands. The marina owner would also have to pay \$300 for the O&M plan.

Total fees – \$35,525

For additional information:

Division of Water Resources:

<http://www.wr.dnrec.delaware.gov/Information/regulations/Pages/WLSLWhatsRegulated.aspx> .

Permitting information:

<http://www.wr.dnrec.delaware.gov/Information/Permits/Pages/WetlandsandSubaqueousLandsPermittingInfo.aspx> .

Subaqueous land regulations:

<http://www.wr.dnrec.delaware.gov/Information/OtherInfo/Documents/Subaqueous%20Regs.pdf> .

Marina regulations:

<http://www.dnrec.delaware.gov/SiteCollectionDocuments/Admin/PollutionPrevention/AppendixX.pdf> .

¹⁶ *Oceanport Indus. v. State*, 1993 Del. Ch. LEXIS 87 (May 18, 1993).

¹⁷ *Department of Natural Resources & Env'tl. Control v. Oceanport Indus.*, 1994 Del. LEXIS 69 (Feb. 14, 1994).

Florida

Lead agency: Florida's Board of Trustees of the Internal Improvement Trust Fund is charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of state-owned submerged lands.¹⁸ For docking facilities containing less than 50 slips and having less than 50,000 square feet of preempted area,¹⁹ the Board has delegated decision-making authority to the Department of Environmental Protection (DEP) and certain water management districts.²⁰ The DEP and these districts perform all staff duties and functions related to the acquisition, administration, and disposition of state lands.²¹

A Sovereign Submerged Land (SSL) lease is required for facilities that preempt public use and are associated with construction on or use of state-owned submerged land.²² Leases may have a standard term of five years or an extended term up to 25 years.²³ However, if a marina offers at least 90% of its slips for rent on a first-come, first-served basis then the standard term of the lease is increased to 10 years.²⁴ A single application is used for both regulatory authorization and proprietary authorization.²⁵ Leases may be renewed, modified and assigned subject to approval by the Board and payment of an additional processing fee.²⁶

Fees: A non-refundable processing fee is required for all lease applications. The fee is adjusted on March 1 of each year based on the Consumer Price Index, calculated by averaging the Consumer Price Index over the previous five-year period, with a 10% cap on any annual increase.²⁷ The fee is currently \$200.00 for a private residential single-family dock or pier and \$500 for all other facilities.

¹⁸ FLA. STAT. ch. 253.03 (8)(b) (2009).

¹⁹ "'Preempted area' means the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public; permanent mooring areas not associated with docks; and swimming areas enclosed by nets, buoys, or similar marking systems. When the Board requires an activity to be moved waterward to avoid adverse resource impacts, the portion of the nearshore area that is avoided by the proposed activity shall not be included in the preempted area." 18 FL. ADMIN. CODE r. 18-21.003 (2009).

²⁰ 18 FL. ADMIN. CODE r. 18-21.005(1) (2009).

²¹ FLA. STAT. ch. 253.0002.

²² 18 FL. ADMIN. CODE r. 18-21.005(1)(d).

²³ *Id.* 18-21.008(1), (2)(a). Extended term leases up to 25 years are available for facilities that "have or will have an expected life, or amortization period, equal to or greater than the requested lease term and where the applicant demonstrates one of three circumstances exist: the applicant provides access to public waters and SSL for the general public on a first-come, first-served basis; the facility is constructed, operated or maintained by the government or funded by government insured bonds with a term greater than or equal to the requested lease term; or an extended term lease is necessary to "satisfy unique operational constraints." 18 FL. ADMIN. CODE r. 18-21.008(2)(a).

²⁴ *Id.* 18-21.008(1).

²⁵ *Id.* 18-21.00401

²⁶ *Id.* 18-21.008(1).

²⁷ *Id.*

Dredging fees for state-owned land are between \$1.25-\$3.25 per cubic yard, with a \$50.00 minimum. The fee assessed is determined by county. For Monroe County, the fee is \$3.25. For Bay, Brevard, Broward, Charlotte, Collier, Dade, Duval, Escambia, Lee, Manatee, Palm Beach, Pasco, Pinellas, and Sarasota counties, the fee is \$2.25. For all other counties, the fee is \$1.25.²⁸

State charge for lease of submerged land for commercial marina: The lease fees for both standard and extended terms are determined by formula and adjusted to include any applicable discounts, surcharges or other payments.²⁹ An initial surcharge of 25% of the initial lease fee or increase in lease fee is charged on all new leases or modifications.³⁰ The regular annual lease fee for a standard term lease is the greater of: 6% of annual income, the base fee of \$0.1413 per square foot of preempted area, or the minimum annual fee.³¹ The annual lease fee for an extended term lease includes a surcharge for the extended term and equals the "annual lease fee for a standard term lease multiplied by (1 +.01X), where: X= the term of the lease in years."³²

Facilities that rent at least 90% of the slips to the public on a first-come, first-served basis receive an annual discount of 30%.³³ Facilities that participate in the Clean Marina Program receive an additional 10% discount.³⁴ When a facility qualifies for both discounts, the extended lease term surcharge is waived. After a marina reports income and pays annual lease fee, the state will issue a supplemental bill for payment of the deficit based on 6% of income.

Sea Grant Marina

In Florida, our hypothetical marina would incur the following fees:

Lease – The standard term lease fee would be \$21,195 (150,000 sq ft x 0.1413 = \$21,195). The extended lease fee with surcharge would be \$26,493.75 (\$21,195 x 1.25—1.25 is assuming a 25 year lease). Applicable discounts and waivers could be subtracted from that amount.

Dredge – The fee could be from \$1.25-\$3.25 per cubic yard, so in this hypothetical, the fee range could be from \$25,000- \$65,000.

Other Fees – Non-refundable processing fee would be \$500.

Total Fees – \$51,993.75-\$91,993.75 (\$26,993.75 plus \$ 25,000-\$ 65,000, depending on where the project is located.).

²⁸ *Id.* 18-21.0011(3).

²⁹ *Id.* 18-21.0011(1)(a).

³⁰ *Id.* 18-21.0011(1)(b)(3).

³¹ *Id.* 18-21.0011(1)(b)(4).

³² *Id.* 18-21.0011(1)(a)(1).

³³ *Id.* 18-21.0011(1)(b)(2).

³⁴ *Id.* 18-21.0011(1)(b)(13).

For Additional Information:

DEP:

<http://www.dep.state.fl.us/water/wetlands/index.htm>

SSL Rules:

<http://www.dep.state.fl.us/legal/rules/shared/18-21.pdf>

Maryland

Lead agency: The Board of Public Works is authorized to issue tidal wetlands licenses for dredging, filling, the construction of structures, or the conduct of certain other activities on state-owned tidal wetlands.³⁵ The Board has delegated authority to the Department of the Environment to issue general licenses for minor activities.³⁶ A minor project is a project that will impact less than 5,000 square feet of wetland, waterway, and/or 100-year floodplain, and is not otherwise considered a major project. The Board of Public Works issues individual licenses for projects that do not qualify for a general license.³⁷ For certain activities, the Board issues licenses based on recommendations from the Water Management Administration (WMA) within the Department of the Environment. The Tidal Wetlands Division of Wetlands and Waterways Program within the WMA reviews proposed projects for wetlands licensing for work on submerged state lands.

Fees: All applicants for wetlands and waterways authorizations issued by the Department of the Environment and Tidal Wetlands licenses issued by the Board must pay an application fee. Fees are \$750 for a minor project; \$500 for a minor alteration; and vary for major projects based on acreage of project.³⁸ Fees for major projects are as follows: Less than ¼ acre is \$1,500; At least ¼ acre, but less than ½ acre, is \$3,000; At least ½ acre, but less than ¾ acre, is \$4,500; At least ¾ acre, but less than 1 acre, is \$6,000; and for 1 acre or more the impact area (in acres) is multiplied by \$7,500.³⁹ In addition to the application fee, the Board charges a license fee of \$1,000 for any individual license authorizing a riparian commercial structure or activity when the structure is intended to increase the revenue of a riparian commercial enterprise or is an improvement to navigation.⁴⁰

State charge for lease of submerged land for commercial marina: Maryland does not lease state-owned submerged land for commercial marinas. Maryland is a riparian rights state.⁴¹ A riparian landowner may make improvements into the water in front of his or her land to preserve access to the navigable water or make certain improvements to protect the shore against erosion.⁴² A person may not dredge or fill on State wetlands, however, without a license.⁴³

Sea Grant Marina

In Maryland, our hypothetical marina would incur the following fees:

³⁵ MD. CODE ANN., ENVIR. § 16 (2008); MD. CODE REGS. 23.02.04.01 (2008).

³⁶ MD. CODE REGS. 23.02.04.04, 23.02.04.05 (2008).

³⁷ *Id.* 23.02.04.05.

³⁸ MD. CODE ANN., ENVIR. § 5-203.

³⁹ *Id.*

⁴⁰ MD. CODE REGS. 23.02.04.22 (2009).

⁴¹ MD. CODE ANN., ENVIR. § 16-103 (2009).

⁴² *Id.* § 16-201.

⁴³ *Id.* § 16-202.

Lease – Maryland does not lease state-owned submerged land for commercial marinas.

Dredge – The Department does not charge for dredging using a “per cubic yard” standard. Rather, the Department charges an application fee based on the proposed impact of the project (below).

Other fees – Because the marina would impact more than 5,000 square feet, it would be considered a major project. Application fees for major projects vary. For projects one acre or more, the impact area in acres is multiplied by \$7,500. This project at 3.44352 acres (150,000 sq ft) would be \$25,826.40. In addition to the application fee, the Board would charge \$1,000 for licensing the project.

Total fees – \$26,826.40

For Additional Information:

Department of the Environment/Wetlands and Waterways:

http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/index.asp

Application fees:

http://www.mde.maryland.gov/assets/document/wetlands_application_fee.pdf

Michigan

Lead agency: The Department of Environmental Quality (DEQ) has authority to lease state-owned submerged land.⁴⁴ The lease may not be for a term of more than 50 years.⁴⁵ An application for a bottom land conveyance must be filed with the DEQ.

The state also requires a joint U.S. Army Corps of Engineers/DEQ permit for the placement of structures or the dredging, filling, or placing spoil or other materials on bottomlands.

The Wetlands and Submerged Lands Unit staff are responsible for the Marina Operating Permit (MOP) program that regulates the operation of marinas on the state's inland lakes and streams in Michigan, under authority of Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act (NREPA).

Fees: The application fee for the bottom land conveyance is \$50. The application fee for the USACE/DEQ construction permit depends on the type and size of the project. For example, the fee for a "major project," which includes dredging of over 10,000 cubic yards is \$2,000. Fees are not cumulative, with the exception of dam and critical dune projects. The highest of all other fees will be charged. A complete list of fees is available at http://www.michigan.gov/deq/0,1607,7-135-3307_29692_24403-67372--,00.html.

State charge for lease of submerged land for commercial marina: An advance annual rental fee is determined by the DEQ. The DEQ calculates the rental fee based on the typical gross dockage and mooring rent in the area, based on the most efficient use for the area. The fee is typically 10% of the gross. The annual rental fee is adjusted every five years (in years ending in "5" and "0"), with changes based on the Consumer Price Index.⁴⁶

Sea Grant Marina

In Michigan, our hypothetical marina would incur the following fees:

Lease – The DEQ would base the lease fee on the typical gross dockage and mooring rent in the area, based on the most efficient use for the area. For example, if our hypothetical marina is in the Lake Saint Clair area, the DEQ would look at how much a commercial marina in the Lake Saint Clair area is charging per slip each year. If the marina is charging \$2,500 per year, the DEQ would account for applicable discounts (for different amenities) and estimate \$2,000 for annual in-water slip rental. The DEQ would then calculate the gross revenue. In the hypothetical that would be \$2,000 x 150 slips = \$300,000. The DEQ would then charge 10% of the gross annual revenue each year, which would be \$30,000. *Id.*

⁴⁴ MICH. COMP. LAWS § 324.32503 (2009).

⁴⁵ MICH. ADMIN. CODE r. 322.1004 (2009).

⁴⁶ *Id.*; phone conversation with Tom Graf, MDEQ, Apr. 7, 2009.

Dredge – This activity would fall under the DEQ/USACE permit. The fee for the DEQ/USACE permit would be \$2,000, since the project requires dredging of more than 10,000 cubic yards of material. (The permit charge for the marina construction fee would be \$10 per slip for marinas over 50 slips for a total of \$1,500; however, in this instance, the dredging fee is higher, so that would be the fee for the permit.)

Other Fees – \$50.00 application fee for the DEQ (lease) conveyance application.

Total Fees – \$ 32,050.00

For Additional Information:

DEQ Submerged Lands Program:

http://www.michigan.gov/deq/0,1607,7-135-3313_3677_3702---,00.html

Great Lakes Bottom Land Conveyances:

http://www.michigan.gov/deq/0,1607,7-135-3313_3677_3702-10865--,00.html

MDEQ/USACE Joint Permit:

http://www.michigan.gov/deq/0,1607,7-135-3307_29692_24403---,00.html

Rhode Island

Lead agency: The Coastal Resources Management Council (CRMC) is charged with managing state-owned submerged land.⁴⁷ “The council is authorized to grant permits, licenses, and easements for any term of years or in perpetuity.”⁴⁸ CRMC’s licensing program serves as the state’s leasing program. The commission issues a 50-year revocable license for marina projects.

All new and significantly expanded marinas must first submit a Preliminary Determination (PD) application to the CRMC for an evaluation of the proposed project. If the project receives a positive PD Request Report, the applicant may file an application for CRMC assent. Assent is required for all developments or operations within, above or beneath the tidal waters below the mean high water mark extending out to the extent of the state’s jurisdiction in the territorial sea.⁴⁹ Administrative review is required for dredging of less than 100,000 cubic yards for marinas or state navigation projects.⁵⁰

Fees: The PD application fee for marina projects would be \$1,000. The fee may be applied against the filing fee for applications for Council Assent when the application is filed within one year of the Determination Request report.

There is a nonrefundable filing fee for the CRMC Assent application. The fee is based on project type and size. For marinas, the fee is based on the estimated project cost.⁵¹

1. *Projects with an Estimated Project Cost (EPC) up to and including \$1000.00 shall be assessed a \$50.00 application fee.*
2. *Projects with an EPC greater than \$1000.00 and less than or equal to \$2500.00 will be assessed a \$100.00 application fee.*
3. *Projects with an EPC greater than \$2500.00 and less than or equal to \$5000.00 will be assessed a \$150.00 application fee.*
4. *Projects with EPC greater than \$5,000.00 and less than or equal to \$10,000.00 will assessed a \$200.00 application fee.*
5. *Projects with EPC greater than \$10,000.00 and less than or equal to \$25,000.00 will assessed a \$250.00 application fee.*
6. *Projects with EPC greater than \$25,000.00 and less than or equal to \$50,000.00 will assessed a \$500.00 application fee.*
7. *Projects with EPC greater than \$50,000.00 and less than or equal to \$100,000.00 will assessed a \$750.00 application fee.*
8. *Projects with EPC greater than \$100,000.00 and less than or equal to \$150,000.00 will assessed a \$1,000.00 application fee.*

⁴⁷ R.I. GEN. LAWS § 46-23-1 (2009).

⁴⁸ *Id.* at § 46-23-16.

⁴⁹ R.I. CODE R. 04-000-010 (2009); CRMC management procedures http://www.crmc.state.ri.us/regulations/CRMC_Management_Procedures.pdf

⁵⁰ R.I. CODE R. 04-000-010 (2009).

⁵¹ The Estimated Project Cost includes all costs associated with site preparation (e.g., earthwork, landscaping, etc.) sewage treatment (e.g., cost of ISDS, sewer tie-ins, etc.) and construct costs (e.g., materials, labor, and installation of all items necessary to obtain a certification of occupancy). The complete fee schedule is available at <http://www.crmc.state.ri.us/applications.html>.

9. Projects with EPC greater than \$150,000.00 and less than or equal to \$200,000.00 will be assessed a \$1,250.00 application fee.
10. Projects with EPC greater than \$200,000.00 and less than or equal to \$250,000.00 will be assessed a \$1,500.00 application fee.
11. Projects with EPC greater than \$250,000.00 and less than or equal to \$300,000.00 will be assessed a \$1,750.00 application fee.
12. Projects with EPC greater than \$300,000.00 and less than or equal to \$350,000.00 will be assessed a \$2,000.00 application fee.
13. Projects with EPC greater than \$350,000.00 and less than or equal to \$400,000.00 will be assessed a \$2,250.00 application fee.
14. Projects with EPC greater than \$400,000.00 and less than or equal to \$450,000.00 will be assessed a \$2,500.00 application fee.
15. Projects with EPC greater than \$450,000.00 and less than or equal to \$500,000.00 will be assessed a \$2,750.00 application fee.
16. Projects with an EPC greater than \$500,000.00 and less than or equal to \$20,000,000.00 will be assessed an application fee of \$2,750.00 plus one-half of one percent of the EPC beyond \$500,000.00, to a maximum fee of \$100,250.00.
17. Projects with an EPC greater than \$20,000,000.00 will be assessed an application fee of \$100,250.00 plus one-fourth of one percent of the EPC beyond \$20,000,000.00.

For dredging, the CAD disposal fee for marinas is \$11.65 per cubic yard.

State charge for lease of submerged land for commercial marina: The state does not have a lease program, but issues a license for the lease of submerged land for commercial marinas (see above).

Sea Grant Marina

In Rhode Island, our hypothetical marina would incur the following fees:

Lease – For the license: Projects with an EPC greater than \$500,000.00 and less than or equal to \$20,000,000.00 will be assessed an application fee of \$2,750.00 plus one-half of one percent of the EPC beyond \$500,000.00, to a maximum fee of \$100,250.00. If the EPC for our marina were \$10,000,000, then: \$2,750.00 + 47,500 (0.005 x 9,500,000 (\$10,000,000-\$9,500,000)) = \$50,250.

Dredge – \$11.65 x 20,000 cubic yards = \$233,000

Other Fees – PD application fee = \$1,000, which is applied towards assent application fee.

Total Fees – \$283,250

For Additional Information:

CRMC:

<http://www.crmc.ri.gov/index.html>

Regulations:

http://www.crmc.state.ri.us/regulations_adopted/section300_04.pdf

Applications and Fees:

<http://www.crmc.ri.gov/applications.html>

Texas

Lead agency: The School Land Board is authorized to lease state land, including Gulf Coast beaches, bays, and other submerged lands, and the Texas General Land Office (GLO) manages the lease of state owned submerged land.⁵² Within the GLO, the Coastal Leasing division issues permits, easements, and leases on all state-owned coastal lands, including submerged lands. Commercial Leases and Easements (called LCs by the GLO) are issued for projects, such as marinas, which produce revenue from the private use of state-owned property.⁵³ For commercial marinas, the GLO issues commercial littoral owner contracts for five years.

Fees: The application fee for the LC is \$50.00. The GLO also charges an evaluation fee of \$50.00 for an on-site field inspection to evaluate the proposed work, calculate an appropriate land-use fee, and make recommendations for approval.

State charge for lease of submerged land for commercial marina: Fees for the LCs are based on the published School Land Board rate schedule in effect at the time the contract is issued. The GLO calculates lease fees using two methods and charges the greater of the two methods.

The first method is based on the area of the individual structure times the structure fee established by the School Land Board. Calculating the rent of a marina based on the first method depends on the design of the marina. If the marina is only composed of boat slips, the General Land Office will charge the \$3.00 per boat slip linear foot for rent. If the marina has other structures (piers, docks, boat ramps) separate from the boat slips, the GLO will also calculate a component fee based on the area of each component times its rate.

The second method takes the appraised value of the adjacent property discounted per the submerged land discount formula⁵⁴ times the area of submerged land encumbered times the rate of return adopted by the School Land Board, which is currently .0855.⁵⁵

For commercial activities, there is an initial dredging fee of \$0.05 per square foot (\$100.00 minimum) for a new or previously unauthorized dredge area.⁵⁶ There is a \$0.001 per square foot fee (\$100.00 minimum) for maintaining a dredged area after the first year.

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⁵² TEX. NAT. RES. CODE § 33.011 (2009).

⁵³ GLO, Coastal and Uplands Leasing,

http://www.glo.state.tx.us/prof_svcs/asset_inspection/leasing/coastal_uplands.html.

⁵⁴ 31 TEX. ADMIN. CODE § 155.1(d)(57) (2009).

⁵⁵ *Id.* § 155.1(d)(5).

⁵⁶ *Id.* § 155.15

In Texas, our hypothetical marina would incur the following fees:

Lease –

Method 1: $\$3.00 \times 30' \text{ slip} \times 150 \text{ slips} = \$13,500.00$

Method 2: Assuming the littoral lot is 50,000 square feet and the value of the lot is \$50,000, the upland value would be \$1.00 per square foot. So, $\$1.00 \times 150,000 \text{ sq ft of encumbered submerged land} = \$150,000$. Multiply $\$150,000 \times 60\%$ (the submerged land discount formula) $\times .0855$ rate of return = \$7,695

Since the first method yielded a higher charge, the annual lease fee would be \$13,500.

Dredge – The initial dredging fee would be $\$0.05 \times 10,000 \text{ square feet (estimation of conversion of 20,000 cubic yards)} = \500.00 .

Other Fees – Application fee of \$50.00. Evaluation fee of \$50.00

Total Fees – \$ 14,100.00

For Additional Information:

GLO leasing:

http://www.glo.state.tx.us/prof_svcs/asset_inspection/leasing/coastal_uplands.html#coastal .

Texas Administrative Code Fees:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=4&ch=155&rl=15](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=4&ch=155&rl=15) .

Virginia

Lead agency: Virginia Marine Resources Commission is authorized to issue permits for all reasonable uses of state-owned bottomlands.⁵⁷ Within the Commission, the Habitat Management Division oversees the permitting process. The MRC has established criteria for siting marinas or community facilities for boat mooring.⁵⁸ The Commission has also published guidelines outlining the policies and procedures of the Marine Resources Commission for the permitting of activities directly affecting subaqueous land.⁵⁹

Fees: A \$25.00 permit fee is assessed for projects with total costs of \$10,000 or less, and the permit fee for projects with total cost of more than \$10,000 is \$100.00.⁶⁰ “Royalties” are assessed in addition to the permit.

State charge for lease of submerged land for commercial marina: In Virginia, the state calls fees collected for the use of state owned submerged land “royalties.” For consistency purposes, the “royalty” charge is placed under the “lease” heading.

Heavy Industrial/Commercial \$0.35 - \$3.50 /ft²
Commercial Recreational

Private Use Marinas \$0.30 - \$2.50 / ft²
(Dockominiums)
Public Use Marinas \$0.20 - \$1.75 / ft²
(Marinas/Fishing Piers)

If the removal of bottom material is necessary for the project, additional royalties of not less than \$.20, nor more than \$.60, per cubic yard of bottom material removed are assessed by the Commission.⁶¹

Sea Grant Marina

In Virginia, our hypothetical marina would incur the following fees:

Lease – Because the marina is a public, recreational marina, the state could charge between \$0.20 - \$1.75 per square foot in royalties for the use of state owned submerged land. In our case, the marina encroaches on 150,000 square feet of submerged land, so the Commission could charge between \$30,000 and \$262,500. In a similar instance, the Commission charged \$1.00 a square foot. Assuming the Commission charged \$1.00 a square foot in this case, the charge for the use of submerged land would be \$150,000.

⁵⁷ VA. CODE ANN. § 28.2-1204 (2008).

⁵⁸ 4 VA. ADMIN. CODE 20-360-10 – 20-360-90 (2008).

⁵⁹ http://www.mrc.virginia.gov/regulations/subaqueous_guidelines.shtml .

⁶⁰ VA. CODE ANN. § 28.2-1206(2008).

⁶¹ *Id.*

Dredge – The Commission may charge between \$.20 and \$.60 cubic yards. That means that the Commission could charge between \$4,000 and \$12,000 for dredging 20,000 cubic yards. In the past, the Commission charged \$.45 a cubic yard for a similar project. In that case, the charge would be \$9,000 in royalties for dredging 20,000 cubic yards.

Other Fees – In addition to fees for the lease and the dredging, the Commission charges a permit fee. Because the project cost more than \$10,000, the permit fee would be \$100.00.

Total Fees – \$159,100.

For Additional Information:

VMRC:

<http://www.mrc.virginia.gov/index.shtm>

Habitat Management Division:

<http://www.mrc.virginia.gov/regulations/hm-permits.shtm>

Rent and Royalty schedule:

http://www.mrc.virginia.gov/regulations/rent_schedule.shtm

TABLE 1: State Agencies, Mechanisms, and Charges for Hypothetical Marina

State	Agency	Mechanism	Total Charge
California	<i>California State Lands Commission</i>	20 year lease; annual lease payment; application fee; minimum expense deposit	\$41,825-\$46,825
Delaware	<i>Department of Natural Resources and Environmental Control</i>	20 year renewable lease (no charge for lease); One-time charge for marina permit, cost dependent on project size; Dredging fees; application fees	\$35,525
Florida	<i>Department of Environmental Protection</i>	5-35 year term; Annual lease fee determined by formula and adjusted to include any applicable discounts, surcharges or other payments. Dredging fees; application fees	\$51,933.75-\$91,933.75
Maryland	<i>Board of Public Works</i>	One-time application fee for license	\$26,826.40
Michigan	<i>Department of Environmental Quality</i>	50-year lease term; annual rental fee based on typical gross dockage and mooring rent in the area; dredging fees	\$32,050.00
Rhode Island	<i>Coastal Resources Management Council</i>	50 year revocable license, one-time assent application fee; dredging fees	\$283,250
Texas	<i>General Land Office</i>	5 year contract; annual commercial	\$14,100

		lease payment; initial dredging fee and maintenance dredging fee; application and evaluation fees.	
Virginia	<i>Virginia Marine Resources Council</i>	One-time royalty fee; permit fee; dredging fees	\$159,100