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THE
UNIVERSITY
OF RHODE ISLAND

Overcoming Impediments to Shellfish Aquaculture: Access to Public Boat Launches

This study was produced by the Rhode Island Sea Grant Law Fellow Program under the guidance of Read Porter, Senior Staff Attorney, and with research and drafting by Mitchell Ramic, Law Fellow.

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Access to public boat launches can be important to the success of shellfish growers in Rhode Island. Many public boat launches are constructed using federal funding for the primary purpose of supporting recreational use for the general public. To protect public launches for recreational uses, some states limit or prohibit their use for commercial purposes. In the absence of accessible private alternatives, growers in these states may face increased costs and other difficulties in accessing their leases on a daily basis. Imposition of similar restrictions in Rhode Island would pose a challenge to state growers.

This case study considers how state and federal law affect shellfish grower access to public boat launches and the implications for Rhode Island growers and agencies. Part I covers how shellfish growers in Rhode Island and nearby states rely on public boat ramps for access to leases. Part II provides an overview of how federal law limits the use of federally-funded public boat launches. Part III reviews how state laws and regulations address access to public boat launches. Part IV presents options for states, including Rhode Island, to consider when developing approaches to commercial use of public boat launches.

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I. Use of Public Boat Launches for Shellfish Aquaculture

Rhode Island aquaculture production has expanded rapidly in recent years and now produces approximately \$5.7 million worth of shellfish—mostly oysters—from 73 farms on about 300 acres of coastal waters.¹ Most Rhode Island shellfish farms are located on small leases that are located in shallow subtidal areas of coastal salt ponds and Narragansett Bay.²

Access to boat launches is emerging as an important issue for the Rhode Island aquaculture industry. Growers must use boats to reach and work on most leases, making marina or boat launch access a critical part of their day-to-day business. Growers need this access not only to launch their vessels and rafts to access leases, but also to load and unload gear and shellfish product.³

Public boat launches serve an important role for growers in Rhode Island, where working waterfront sites in Rhode Island are limited.⁴ Access to public boat launches can be contested, particularly during the summer boating season when they are heavily used.⁵ The industry has also expressed a concern that the state may prevent growers from using public boat launches facilities funded by recreational fishing programs.⁶ Where these launches represent the only effective means of accessing a site, such an action could effectively bar growers from accessing their leases. In other instances, growers would need to identify alternative launch sites, which could increase costs or pose other logistical challenges.

Industry concerns have been fueled by legal restrictions on grower use of public boat launches in other states. For example, a shellfish grower was warned by state enforcement personnel for using a public boat launch in Westport, Connecticut as a staging area for gear and

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1. COASTAL RES. MGMT. COUNCIL, *AQUACULTURE IN RHODE ISLAND 2017 3* (2016).
 2. See RIDEM, [Approved Aquaculture Leases in Rhode Island \(Interactive Map\)](#) (2017).
 3. Telephone interview with Tessa Getchis, Aquaculture Extension Agent, CT Sea Grant (Sep. 29, 2017).
 4. Rhode Island has identified preservation and expansion of the state’s working waterfront access, including boat ramps, as part of its Shellfish Management Plan. RHODE ISLAND SHELLFISH MANAGEMENT PLAN ver. II (2014) (“Affordable dockage and access for the shellfish industry is becoming limited, particularly as the industry is expanding. Parking at some boat ramps and public access points is an issue that should be addressed.”).
 5. Cassius Shuman, *Aquaculture Farmers Seek Better Process*, BLOCK ISLAND TIMES, Oct. 14, 2017, (“‘There are too many multi-users at the boat ramp’ behind BIMBI, said oyster farmer Dave Deffley. ‘I think it’s a multi-faceted issue. Things get clogged there. It’s a safety issue. That’s where we offload. If you improved that one area it would be beneficial.’”).
 6. Email from Robert Rheault, Executive Director, East Coast Shellfish Growers Ass’n to Read Porter, Senior Staff Attorney, Marine Affairs Institute (Sept. 10, 2017).

loading/unloading product.⁷ The launch is the only such facility in the state east of New Haven, and therefore sees a high level of recreational use during boating season.⁸ As discussed below, Connecticut prohibits commercial use of public launches, with very limited exceptions, to protect access for these users. As a result, this grower, and other similarly situated growers, may need to determine an alternate access point to continue their business operations. Imposition of similar legal restrictions on access to public boat launches in Rhode Island could result in an important new impediment to the state shellfish aquaculture industry.

II. The Federal Role in Public Boat Launches

The federal government plays an important role in the construction and maintenance of public boat launches by states. The Federal Aid in Sport Fish Restoration Act,⁹ also known as the Dingell-Johnson Act and Wallop-Breaux Act, levies fees on recreational fishing equipment, which are passed through to states to support recreational fishing and boating activities. Funding for projects under the Act comes from taxes and duties on sport fishing equipment, vessels, and boat gas, which are placed into the Sport Fish Restoration and Boating Trust Fund.¹⁰ The U.S. Fish and Wildlife Service (USFWS) apportions the revenues among categories of approved projects and among states.¹¹ States use these apportioned funds as up to 75 percent of the total cost of approved projects.¹²

Construction and maintenance of public boat launches may qualify for funding under two subprograms.¹³ States can use funds from the Sport Fish Restoration subprogram to acquire land and construct structures for public access for sport fishing, as well as to maintain and operate previously-funded facilities.¹⁴ Similarly, USFWS authorizes use of the Recreational Boating Access subprogram to “[a]cquire land for new facilities, build new facilities, or acquire, renovate, or improve existing facilities to create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating.”¹⁵

7. Interview with Tessa Getchis, *supra* note 3.

8. *Id.*

9. 16 U.S.C. § 777; 50 C.F.R. § 80.51.

10. 26 U.S.C. §§ 9504 (establishing Trust Fund); 16 U.S.C. § 777b (authorizing appropriations from Trust Fund).

11. 16 U.S.C. § 777c.

12. *Id.* § 777e (federal approval of projects).

13. 50 C.F.R. § 80.51.

14. *Id.* § 80.51(a).

15. *Id.* § 80.51(b)(1).

The Act requires states to spend at least 15 percent of their appropriated funds each year on recreational boating access projects.¹⁶

Projects funded under the Act are subject to certain conditions, including for commercial use of federally-funded projects. In particular, states may allow commercial activities at federally-funded facilities, subject to certain conditions.¹⁷ Specifically, “[a] State agency may allow commercial, recreational, and other secondary uses of a grant-funded parcel of land or water or capital improvement if these secondary uses do not interfere with the authorized purpose of the grant.”¹⁸ The state has “first responsibility” to determine if commercial activity interferes with its intended purpose, but USFWS will consult with states and retains the right to review and inspect facilities to determine if commercial use is interfering with recreational purposes.¹⁹

States have broad latitude to manage the use of boat launches to protect recreational use. The city of Lakeland, Florida has an ordinance that “prohibits the operation of any airboat upon any of the lakes within the city.”²⁰ This ordinance was challenged unsuccessfully by the Kissimmee River Valley Sportsman Association.²¹ In dismissing the challenge, the Eleventh Circuit Court of Appeals held that the Act “does not create a federal right to equal access for boats of common horsepower ratings at federally funded boat launch facilities.”²² Thus, it was permissible for Lakeland to distinguish between types of recreational boats. If a state or city can create preferences among recreational vessels, then it could surely also distinguish between permissible commercial activities. Thus, states appear legally authorized to deny the use of public boat launches to commercial users, including shellfish growers.

The Sport Fish Restoration Program provides state fish and wildlife agencies with needed capital to improve public access—including construction and maintenance of public boat launches. However, states accepting these funds must ensure that the resulting projects are available to recreational users. Thus, while states can allow commercial use of these facilities, including by shellfish growers, these commercial uses cannot unduly interfere with recreational

16. 16 U.S.C. § 777g(b).

17. 50 C.F.R. § 80.134.

18. *Id.*

19. [USFWS Service Manual](#), 522 FW §§ 22.6, 22.7.

20. Lakeland, Fla. Code of Ordinances § 58-32.

21. *Kissimmee River Valley Sportsman Ass'n v. City of Lakeland*, 250 F.3d 1324, 1325 (11th Cir. 2001).

22. *Id.* at 1327.

use—a particular issue where public access points are few in number compared to the demand for such facilities. The next section explores the approaches that coastal states have undertaken to manage commercial use at public facilities.

III. State Limitations on Public Boat Ramps for Commercial Fishers

This section describes state regulation governing the use of public boat launches by shellfish growers in coastal states. In general, states do not specifically regulate this sector, but instead regulate all commercial uses or, in limited instances, specific uses that pose particular challenges. This analysis assumes that a regulation of commercial use applies to shellfish aquaculture use, including launching vessels to access leases and loading or unloading gear or product. States also use different terms to describe boat launches, including public access point, public boat ramp, public boat launch and public access facility. This section adopts the language used in each state.

A. Alabama

In Alabama, commercial activity is prohibited at a public access area. Specifically, “[p]ublic access areas are for the use of pleasure boating, hunting and fishing. No commercial, industrial or construction equipment such as barges, dredges, etc., are to be loaded or unloaded without the specific written authorization of the Commissioner of Conservation and Natural Resources.”²³ In this regulation, public access is defined as “any state-owned, leased, and/or operated boat launching and/or landing access area, parking lot, ramp, [or] pier” and surrounding areas.²⁴

B. Alaska

Under Alaska regulations, it is unlawful for any boat owner or user to “conduct or operate any commercially oriented business enterprise at [a state harbor] facility unless specifically authorized in writing by the commissioner.”²⁵ State harbor facility is broadly defined to include “any float, grid, dock, launching ramp . . . and appurtenances constructed or operated by the State of Alaska.”²⁶ The intent of the prohibition on

23. ALA. ADMIN. CODE r. 220-2-.37 (2017).

24. *Id.*

25. ALASKA ADMIN. CODE tit. 17, § 80.090(4) (2017).

26. *Id.* § 80.110(4).

commercial use of these facilities is to “discourage and prevent the use of state harbor facilities by individuals or firms for the purpose of conducting commercial enterprises.”²⁷ However, this rule is also intended to “encourage the use of state harbor facilities by commercial fishermen.”²⁸ This apparent contradiction is not explained, but suggests that launching of commercial vessels may not be unlawful, whereas other activities, such as loading and unloading gear or landing product, may be prohibited.

Alaska state parks may require the payment of a fee (up to \$20 per day or \$150 per year) for the use of an improved boat ramp in a state park facility.²⁹

C. California

California boat launching regulations do not explicitly regulate commercial activity at public boat launches.³⁰

D. Connecticut

Connecticut Department of Energy and Environmental Protection (DEEP) regulations provide that “no person shall engage in any commercial activity at [a boating access area] unless so authorized by the Department of Environmental Protection.”³¹ “Boating access area” is not defined, but the prohibition applies to such areas that are under DEEP jurisdiction and which are “intended to provide public access.”³²

E. Delaware

Delaware has established a regulation governing the use of public boat ramps and mooring facilities.³³ The regulation is silent on and does not prohibit commercial use of these facilities.³⁴

27. *Id.* § 80.020.

28. *Id.*

29. ALASKA ADMIN. CODE tit. 11, § 05.010(a)(12)(F)(ii) (2017).

30. *See* CAL. CODE REGS. tit. 14, § 4657 (launching areas regulation).

31. CONN. AGENCIES REGS. § 26-16-1.

32. *Id.*

33. 7-3000-3100 DEL. ADMIN. CODE § 10.2 (2017).

34. *Id.*

F. Florida

The Fish and Wildlife Conservation Commission (FWC) is responsible for implementation of Sport Fish Restoration projects in Florida, including boating access.³⁵ However, FWC has not issued general regulations governing public boat ramps or similar facilities. As a result, commercial activity is not prohibited at such facilities. Commercial activity may be subject to different or specific regulation in particular locations, however. For example, “[c]ommercial activity by a person or entity” is prohibited on lands under the jurisdiction of the South Florida Water Management District “without a written agreement with the District.”³⁶ Other local restrictions may also apply.

G. Georgia

Georgia has not issued any law or regulation governing the commercial use of public boat launches.

H. Hawaii

The state of Hawaii has established a policy that no “regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public.”³⁷ Hawaii therefore prohibits the commercial use of small boat harbors and facilities, except with prior written approval from the state Department of Land and Natural Resources (DLNR) or an executed agreement with the DLNR.³⁸

Department authorization is in the form of several categories of use permits, including a commercial use permit, which “authorizes the owner of a commercial vessel to engage in commercial activities as specified in the permit.”³⁹ The regulations define “commercial vessel” as “a vessel engaged in any trade or business.”⁴⁰ While commercial fishing vessels are commercial vessels under this definition, they are exempt from certain permitting requirements “if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.”⁴¹

35. See FWC, [Boat Ramps and Access](#).

36. FLA. ADMIN. CODE ANN. r. 40E-7.537(10) (2017).

37. HAW. CODE R. § 13-231-50 (2017).

38. *Id.* § 13-231-51; see also DEPARTMENT OF LAND AND NATURAL RESOURCES, [Frequently Asked Questions](#) (Aug. 31, 2013).

39. HAW. CODE R. § 13-231-3.

40. *Id.* § 13-231-54.

41. *Id.* § 13-231-55.

Issuance of commercial use permits for the use of state boat launching ramps is restricted because the ramps “were constructed for the primary purpose of providing access to the waters of the State for trailered boats.”⁴² Therefore, the state restricts commercial permits for these facilities to “boats that are regularly launched and recovered from boat launching ramps and used in the course of doing business.”⁴³ Fees for the use of these facilities are the greater of \$75 per month or two percent of gross revenues.⁴⁴

I. Louisiana

The Louisiana Wildlife and Fisheries Commission has not promulgated any regulations on the use of public boat launches. However, commercial boats are prohibited from using any Office of State Park facilities without the written consent of the assistant secretary.⁴⁵ Commercial boats are defined to include “any watercraft from which commercial activities are conducted, e.g., shrimping, crabbing, fishing, etc.”⁴⁶ Prohibited uses specifically include, but are not limited to, “loading or unloading of materials, boarding of persons, operating power equipment and non-emergency repair work.”⁴⁷

J. Maine

The Maine Bureau of Parks and Lands, Boating Division regulates the use of state boating facilities.⁴⁸ The regulations apply “to any person using State boat launching facilities or waters immediately surrounding the facilities.”⁴⁹ Under the regulations, “uses of the launching facility and parking areas, including, but not limited to, commercial use . . . are allowed only by special activity permit from the Bureau Director.”⁵⁰ Department regulations do not contain provisions governing the conditions for issuance of such permits.

K. Maryland

Maryland has not issued regulations governing the use of state boat launches or restricting their use for commercial purposes. However, restrictions may apply at

42. *Id.* § 13-231-67.

43. *Id.*

44. *Id.* § 13-234-31. See LOUISIANA STATE PARKS, *Find Parks and Historic Sites: Play* (showing state park boat launch locations).

45. LA. ADMIN. CODE tit. 25, Pt. IX, § 307(H) (2017).

46. *Id.*

47. *Id.*

48. 01-670-004 ME. CODE R. § 1 (2017).

49. *Id.*

50. *Id.* § 2(J).

facilities under local jurisdiction. For example, the Caroline County Code of Laws requires any person wishing to use “Public Landing” to first obtain a Public Landing Permit from the County Department of Recreation and Parks.⁵¹ The applicable regulation states “[i]t shall be a violation of this Article for any person to launch or remove any vessel from the water of a Public Landing.”⁵² Public Landings are defined as “public landings, public wharves, public docks, public piers, public marinas, and public harbors,” as well as adjacent lands and rights-of-way, under the County’s jurisdiction.⁵³

L. Massachusetts

Massachusetts limits commercial use of public boating access facilities. “Unless otherwise authorized by special or general permit . . . , it is unlawful for any person to . . . conduct any business, commercial or trade activity that is inconsistent with the intended use of the facility.”⁵⁴ A public access facility means “any public facility that . . . provide[s] access by the public to a land and/or water resource within Massachusetts” that is subject to the jurisdiction of the state Public Access Board.⁵⁵ Public access facilities explicitly include “boat launching ramps.”⁵⁶

Aquaculture use may or may not be consistent with the intended use of a boat launch. The regulations define “Intended Use of a Public Boating Access Facility” to mean “the launching and retrieval of any trailered or cartop watercraft and parking of the vehicle used to launch and retrieve watercraft in a properly marked parking area.”⁵⁷ Launching of vessels for service of aquaculture sites appears consistent with this definition, but the legality of using these facilities for loading and unloading of gear and product appears uncertain without a permit. The regulations do not appear to authorize issuance of permits for regular commercial use, as special permits authorize activities lasting no more than seven days, while general permits are available only to governmental authorities for public purposes.⁵⁸

51. [CAROLINE CY., MD. CODE OF PUBLIC LOCAL LAWS](#), Ord. No. 96-002, § 148-12 (2017).

52. *Id.* § 148-12.

53. *Id.* § 148-3.

54. 320 MASS. CODE REGS. 2.04 (2017).

55. 320 MASS. CODE REGS. 2.01 (2017) (citing MASS. GEN. LAWS ch. 21A, § 11B (establishing Board)).

56. *Id.*

57. *Id.*

58. *Id.* § 2.03.

M. Mississippi

Mississippi has not issued any laws or regulations prohibiting commercial use of public boat launches.

N. New Hampshire

New Hampshire prohibits the use of public boat access facilities for commercial activity.⁵⁹ Under this regulation, “[n]o person shall conduct a commercial or business activity at a boat access facility.”⁶⁰ Boat access facility means “all of the property owned or controlled by the fish and game department which provides public access to public waters.”⁶¹

O. New Jersey

New Jersey has not issued a rule prohibiting commercial fishermen or shellfish growers from using public boat launches. The New Jersey Boat Ramp Guide notes that growers “seldom interfere with recreational boating or angling activities because the scale of the operations is small in relation to the total bay acreage, leases are clustered and located in shallow water areas away from navigation channels, and aquaculture gear profile is low.”⁶² This passage suggests that the state has determined that grower use of boat ramps is unlikely to interfere with the recreational use of those facilities.

P. New York

New York has a regulation prohibiting commercial activity at “all boat-launching sites [and] fishing-access sites” under “the jurisdiction of the Division of Fish and Wildlife of the Department of Environmental Conservation.”⁶³ Specifically, the regulation states: “[n]o person shall conduct any business, buy, sell, offer or expose for sale, hire, lease or vend any article or merchandise of any kind [at these facilities] unless a written permit is first obtained from the department.”⁶⁴ A written permit is also needed to use these sites “for any purpose other than the launching and retrieval of boats”⁶⁵ The permitting process is not defined.

59. N.H. CODE ADMIN. R. FIS 1602.01(m) (2017).

60. *Id.*

61. N.H. CODE ADMIN. R. FIS 1601.01 (2017).

62. NEW JERSEY MARINE SCIENCES CONSORTIUM (NJMSC), [NEW JERSEY BOAT RAMP GUIDE 11](#).

63. N.H. CODE ADMIN. R. & REGS. tit. 6, § 59.1(c) (2017).

64. *Id.*

65. *Id.*

Q. North Carolina

North Carolina has not issued a rule or regulation prohibiting shellfish growers from using public boat launches. North Carolina defines and regulates the use of “public fishing and boating access area,” which includes any sites under the jurisdiction of the North Carolina Wildlife Resources Commission.⁶⁶ The regulations do not prohibit commercial activity. However, they do restrict allowable activities to launching boats: “it is unlawful to use any boating access area for purposes other than the launching of boats and parking vehicles and boat trailers.”⁶⁷ This provision may restrict loading and unloading of gear and product where unrelated to the launching of a vessel.

R. Oregon

Oregon has issued regulations governing disbursement of funding for creation and maintenance of “public boating facilities.”⁶⁸ However, neither these regulations nor other state laws or regulations prohibit commercial use of these facilities.

S. Pennsylvania

The Pennsylvania Fish and Boat Commission has promulgated a regulation regulating activities at Commission-controlled access areas and marinas.⁶⁹ This regulation is silent on commercial use of these areas.⁷⁰ However, additional Commission regulations govern commercial use of any Commission property. Under this regulation, “it is unlawful to use Commission-owned or -controlled property for . . . commercial purposes other than the intended use of the property.”⁷¹ Limited commercial use consistent with intended uses is allowed, provided that it “does not interfere with free public use of the access” and complies with specific conditions.⁷² These conditions primarily apply to “commercial enterprises”—defined as boat rental companies—and include parking restrictions and yielding to recreational users.⁷³

66. 15A N.C. ADMIN. CODE 10E.0101 (2017).

67. 15A N.C. ADMIN. CODE 10E.0104(e) (2017).

68. OR. ADMIN. R. 250-014-0001 – 250-014-0005 (2018).

69. 58 PA. CODE § 53.12a.

70. *Id.*

71. 58 PA. CODE § 53.16.

72. *Id.*

73. *Id.*

T. Rhode Island

Rhode Island has not issued a law or regulation prohibiting commercial use of public boat launches.

U. South Carolina

South Carolina has issued extensive regulations governing the use of lands under the jurisdiction of the state Department of Natural Resources, but these regulations do not prohibit the commercial use of public boat launches.⁷⁴

V. Texas

Texas has not issued a law or regulation prohibiting commercial use of public boat launches.

W. Vermont

Vermont statutes authorize the state to acquire and regulate lands for hunting and fishing, including access areas and landing areas.⁷⁵ The Vermont Fish and Wildlife Board has issued regulations implementing this authority by governing “the use by the public of access areas, landing areas,” and other areas,⁷⁶ as well as separate regulations governing the use of “fishing access areas.”⁷⁷

On access areas other than fishing access areas, “Commercial Activities” are prohibited unless specifically allowed.⁷⁸ “Boating, including launching and landing, for fish-based and wildlife-based activities” is a specifically-authorized commercial activity, and may apply to shellfish aquaculture.⁷⁹ In the alternative, the Commissioner of the Vermont Fish and Wildlife Department may grant a “Special Use Permit, Lease, or License” for any prohibited activity, “so long as the Commissioner has determined that there will be no adverse impact on Authorized Activities or other adverse impacts on the primary purposes of ownership.”⁸⁰

74. See S.C. CODE ANN. REGS. 123-200 – 123-211.

75. VT. STAT. ANN. tit. 10, §§ 4144-4145.

76. 16-4-105 VT. ADMIN. CODE § 1.1 (2017).

77. 16-4-149 VT. ADMIN. CODE § 1.1 *et seq* (2017).

78. 16-4-105 VT. ADMIN. CODE § 5.1(f). Commercial Activity is defined as “any activity or service that produces income for any person, group, business or entity, including any activity or service by any non-profit entity where a fee is required or requested.” *Id.* § 3.12.

79. *Id.* § 4.1(c).

80. *Id.* § 6.1.

“Commercial activity” is also prohibited at fishing access areas unless authorized.⁸¹ Commercial activity in these areas is broadly defined as “any activity or service that produces income to any entity or individual.”⁸² Limited commercial activity is authorized, including “the launching of any vessel to be used for fishing and parking of vehicles and trailers necessary for and contemporaneous with these purposes” and the launching of inboard and outboard motorboats for other activities.⁸³ The Commissioner may also issue special permits for group uses upon a determination that these uses will not adversely affect priority uses.⁸⁴

X. Virginia

Virginia has not established laws or regulations specifically governing the use of public boat launches for commercial use. However, two state departments have relevant statutory and regulatory responsibilities.

The Department of Conservation and Recreation (DCR) has adopted regulations establishing fees for the use of DCR facilities, including fees for boat launches and for associated parking.⁸⁵ In addition to these generally applicable fees, it separately regulates certain commercial uses of DCR facilities located in state parks.⁸⁶ This regulation does not appear to apply to shellfish growers because they do not deliver services to the public for a fee; moreover, it specifically excludes licensed commercial fishermen, who are instead “required to pay the applicable public user fee for the use of state park boat launches.”⁸⁷ This commercial use provision thus recognizes that DCR facilities are open to commercial use upon payment of the required fee.

The Department of Game and Inland Fisheries (DGIF) is empowered to acquire “lands and structures for use as public landings, wharves, or docks” and to regulate the use of such facilities by regulation.⁸⁸ State law and DGIF regulations prescribe use and parking

81. 16-4-149 VT. ADMIN. CODE § 5.15 (2017).

82. *Id.* § 3.1.

83. *Id.* § 7.1 (citing *id.* §§ 4.1-4.3).

84. *Id.* § 8.1.

85. 4 VA. ADMIN. CODE § 5-36-50 (2017) (applying to “businesses that use the lands and/or facilities of a state park to deliver services to the public for a fee, and when such use is similar or the same as the general public use”).

86. 4 VA. ADMIN. CODE § 5-36-80 (2017).

87. *Id.*

88. VA. CODE § 29.1-103(5).

fees for state facilities, but specifically waive fees for the use of “department-owned boat ramps.”⁸⁹ However, special uses of boat ramps require a permit, available for Private/Commercial Use from DGIF for \$50.⁹⁰

Finally, the Marine Resources Commission (MRC) governs shellfish landings for public health purposes. Its regulations prescribe specific loading and unloading locations for particular shellfishing activities, including harvest from condemned areas and during shellfish relays.⁹¹

Y. Washington

Washington prohibits the “use [of] department lands for any commercial purposes without a permit from the director” of the Department of Fish and Wildlife.⁹² “Commercial use or activity” includes uses “[w]here the primary purpose is the sale or barter of a good or service.”⁹³ “Department land” includes all water and access areas “under the ownership, management, lease, or control of the department, excluding private lands.”⁹⁴ Under these definitions, department-controlled boat launches are considered department land, and aquaculture is considered commercial use. As a result, growers need a permit to use state boat launches. The regulations do not indicate the requirements to obtain a permit.

IV. Analysis

Coastal states have adopted a variety of legal mechanisms governing the use of public boat launches for commercial purposes in compliance with federal law. The Federal Aid in Sport Fish Restoration Act allows states to regulate the use of public facilities constructed or maintained with funds from the Sport Fish Restoration Trust Fund.⁹⁵ States can allow commercial activity at these facilities as long as that activity does not undermine the purpose of the grant funding.⁹⁶

89. *Id.* § 29.1-113; 4 VA. ADMIN. CODE § 15-20-66.

90. 4 VA. ADMIN. CODE § 15-20-200.

91. 4 VA. ADMIN. CODE §§ 20-980-20 (listing of locations for loading and unloading from condemned locations); 20-1200-20 (loading and unloading location for oysters during the Rapahannock River oyster relay season).

92. Wash. ADMIN. CODE § 220-500-060 (2017).

93. *Id.* § 220-500-020(6)(b) (2017).

94. *Id.* § 220-500-020(9).

95. 50 C.F.R. § 80.134.

96. *Id.*

States use three methods to regulate public boat launches in compliance with this federal mandate: authorization; silence; and prohibition. A few states have authorized commercial use in all or a subset of conditions, either explicitly or implicitly. Other states prohibit all commercial activity or allow such use only under tightly-constrained circumstances. However, silence is the most common approach—and the approach currently used by Rhode Island. In these states, no regulation speaks to commercial use of public boat launches, and commercial use is allowed by default. The states adopting each approach are listed in the table below.

Explicit or Implicit Authorization	Silence	Prohibition / Special Permit
Alaska* Hawaii Pennsylvania Vermont Virginia*	California Delaware Florida Georgia Maryland Mississippi New Jersey North Carolina Oregon Rhode Island South Carolina Texas	Alabama Connecticut Louisiana Maine Massachusetts New Hampshire New York Washington

* commercial fishing use explicitly authorized

Five states considered in this study have adopted regulations that implicitly or explicitly authorize commercial use of public boat launches. These states can be further divided. In Pennsylvania and Vermont, this authorization is conditional and requires deference to recreational users. Hawaii’s authorization is explicit and subject to conditions established in a permit system. Alaska and Virginia indicate that licensed commercial fishermen can use state boating access facilities in common with public users. If shellfish growers are included in this category, this last form of authorization would be the broadest potential authorization for them to use state boat launches. Fees may be required for use of boat launches, and these fees may be enhanced for commercial users in comparison to public users. For example, Virginia has a special use permit for commercial activity at certain state-owned boat ramps. The fees associated with these approvals may help manage demand for commercial use of limited resources while also supporting maintenance of the boat launches for their statutorily-protected recreational use.

Most states have not regulated commercial access to state boat launches. This silent approach leaves in place the default assumption that these facilities are open to all users. This regulatory silence implies that conflicts have not arisen enough to push the state to take direct action on this issue. In these states, commercial activity is likely to be tolerated as long as it does not interfere with the recreational use of the public boat launch. However, this tolerance may be tested if and when conflicts over boat launch access arise. Thus, shellfish growers may prefer explicit consideration and authorization to remove uncertainty over access rights, even if they must pay a fee or face conditions.

A variety of states have acted to prohibit commercial use of public boat launches, often with limited exceptions that may be unavailable to shellfish growers. Prohibitions on commercial use of public boat launches represent a clear method of ensuring the primacy of recreational use of public boat launches funded through the Sport Fish Restoration Trust Fund. Many of these regulations appear to have been drafted to primarily address on-site commercial uses like concessions. However, shellfish growers also appear to be subject to these restrictions because launching vessels and loading and unloading gear and product are conducted for a business purpose. For the same reason, it is unlikely that growers can avoid prohibitions by engaging in recreational activities in conjunction with commercial activity—a little recreational fishing will not alter the fact that the activity's primary purpose is commercial.

States with commercial prohibitions often recognize that some commercial use may be important and have created limited exceptions to blanket prohibitions on commercial use. These exceptions may take the form of a Special Permit or other written authorization from the director of the responsible agency. For example, Connecticut regulations allow the Department of Energy and Environmental Protection to authorize commercial use of launches, but do not detail the process to obtain authorization or under what conditions it may be granted.⁹⁷ In practice, this exception has enabled the state Department of Transportation contractors to use boat launches as part of bridge repair work,⁹⁸ and the Department may not consider ongoing private business use of a boat launch to be appropriate for authorization. This may suggest that exceptions that are legally available to shellfish growers may in practice present insurmountable barriers to shellfish growers.

97. CONN. AGENCIES REGS. § 26-16-1.

98. Interview with Tessa Getchis, *supra* note 3.

V. Conclusion

The purpose of this case study is to inform choices about the use of state boat launches by shellfish growers. It considered state approaches to regulating the use of public boat launches for commercial use to establish the range of regulatory approaches currently in use. This case study identified three primary approaches to the commercial use of public boat launches that are available to Rhode Island: (i) implicit or explicit authorization; (ii) silence; and (iii) prohibition for commercial use, with limited exceptions. By considering these options to carefully tailor a regulatory approach, Rhode Island may effectively ensure that aquaculture use of public facilities does not interfere with recreational use, while also continuing to support the expansion of Rhode Island's growing aquaculture industry.