



# Florida Legislative Committee on Intergovernmental Relations

## *Draft Interim Project Report*



### Improving Consistency and Predictability in Dock and Marina Permitting *(Rev. February 21, 2007)*

## I. Project Overview

### A. Summary

This project represents a continuation of efforts by the Legislative Committee on Intergovernmental Relations (LCIR) to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. Practices considered as possible opportunities for improvement are: enhance staffing and related resources at the Florida Department of Environmental Protection (DEP) and water management districts (WMDs); create public interest mitigation models; establish and implement standards for “Model Docks”; develop a statewide template for permit review; clarify or simplify conservation easement policies; and establish uniform methods to calculate preemption areas.

Principle recommendations contained in this report support taking steps to:

- increase staffing and technology resources for DEP;
- direct the Department of Business and Professional Regulation to establish certification and licensure standards for marine contractors;
- authorize local governments, with the assistance of local advisory councils, to identify public interest projects that serve as mitigation for dock and marina permitting;
- require local governments to accept self-certification in order to exempt

permitting of single-family docks meeting certain standards;

- require DEP to continue to request participation of appropriate professional associations when developing guidance documents regarding standards of marine building materials and construction methods;
- authorize DEP to accept electronically transmitted materials in the Request for Additional Information (RAI) process; and
- consider abolishing the current land lease fee exemption, and levy a flat or single fee that would apply to all currently exempt docks.

### B. Background

The LCIR adopted a 2006-2007 interim project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of dock, marinas, and other water related facilities in Florida. This project follows a recommendation contained in an LCIR 2005–2006 report that identified major issues involved with development and redevelopment along Florida waterways, current government activities to alleviate those issues, and whether additional legislative action is warranted.<sup>1</sup>

Key Points in the 2005-2006 report include:

- Balancing the demands for increased public access to waterways and commercial and residential development to accommodate population growth, while addressing federal, state, and local requirements to protect and preserve wildlife and their habitats, remains an ongoing challenge for Florida policymakers.
- Recent legislation directed state agencies and local governments to undertake various actions to consolidate federal and state permitting programs, to maintain or increase public waterfront facilities, and to preserve and protect current commercial and recreational waterfronts from conversion to private use.<sup>2</sup> In addition, agencies initiated studies to inventory waterfront facilities available to the public and suggest methods to expand this infrastructure.<sup>3</sup>

Principle recommendations contained in the 2005-2006 LCIR report directed agencies to monitor progress of these endeavors, evaluate results, and report findings including suggestions for program modifications to the Legislature in a timely manner. These reports should assist and guide future legislative action to promote public access to Florida's waterways. For example, on November 1, 2006, the Florida Fish and Wildlife Conservation Commission (FWC) provided a status report on its study to develop an inventory of Florida's boating access facilities and strategies for realizing their economic benefit to local, regional, and state economies.

Stakeholder groups acknowledged the importance of the 2005-2006 LCIR Report recommendations and supported further review of policies impacting the permitting of docks and marinas in Florida.

Subsequent discussions with representatives of DEP, WMDs, the Florida Marine Contractors Association (FMCA), and LCIR staff generated the proposal that the LCIR should undertake a follow-up 2006-07 Interim Project to improve consistency and predictability in the permitting of water-related facilities in Florida.

### **C. Methodology**

During the course of the study, marine contractors and consultants were interviewed and surveyed regarding their backgrounds and experiences in marine construction and permitting. LCIR staff completed additional field interviews with selected contractors and consultants in various regions of the state in order to develop a better understanding and perspective of the permitting process, problems, and the extent these issues are local or statewide in nature. Field interviews were conducted in Pensacola, Jacksonville, Ft. Myers, Naples, Clearwater, and areas in unincorporated Pinellas County.

Additional information was collected through interviews with staff from DEP's state and district offices, Florida Department of Business and Professional Regulation (DBPR), Florida Department of Management Services (DMS), Agency for Workforce Innovation, Florida Fish and Wildlife Conservation Commission (FWC), WMDs, port authorities, and local environmental permitting agencies. LCIR staff also consulted with legislative committee staff from the Florida Senate and House of Representatives.

### **D. Organization**

Section II of the report summarizes the roles of federal, state, regional, and local governmental agencies in the permitting of

water-related facilities in Florida. It identifies major state programs that regulate the permitting of activities in, over, and around Florida's wetlands, the different types of regulatory authority used in the permitting process, and provisions for delegating regulatory authority by the state to WMDs and local governments, and further delegation by WMDs to local governments.

Section III presents the study's findings on the extent to which the different policy issues are associated with improving the consistency and predictability in the permitting of water-related facilities in Florida. It identifies areas of consensus regarding permitting issues, ongoing activities to address them, and suggestions for future activities. Recommendations for changes to state policies or the undertaking of actions by the state or other entities are proposed, as appropriate.

Section IV suggests a method for funding the study recommendations and ways to assist in its implementation.

## **II. Overview of Water-Related Facilities Permitting in Florida<sup>4</sup>**

Permit applicants of water-related facilities in Florida must obtain approval of state and federal agencies. In general, development activities over or adjacent to surface waters in Florida are regulated primarily by the Environmental Resource Permit (ERP) Program as administered by DEP or WMDs, unless specifically exempted from permitting requirements. These programs are authorized under chs. 253, 258, 373, and 403, F.S. In addition, approximately 30 separate rules of the DEP and WMDs have been adopted to implement this program.<sup>5</sup> These activities are regulated at the federal level by the U.S. Army Corps of Engineers (COE).<sup>6</sup> County and municipal

governments, and in certain instances, other designated governmental entities, such as port authorities, regulate water-related development activities at the local level.<sup>7</sup>

### **A. State Programs Governing Dock and Marina Permitting**

#### **1. Environmental Resource Permit Program**

The State of Florida ERP program regulates the development, modification, and operations of activities in uplands, wetlands, and other surface waters that alter the flow of surface waters. In addition to dock and marina permitting, the program covers construction of seawalls, dredging of navigation channels, and new development activities in uplands that produce stormwater runoff. The intent of the program is to ensure that such development activities do not degrade water quality, cause flooding, or habitat for marine and wetland wildlife. The ERP program is in effect for the entire state, with the exception of the Florida Panhandle contained within the jurisdictional boundaries of the Northwest Florida Water Management District where the Wetland Resource Permit Program is in effect.<sup>8</sup> However, during the regular Legislative Session, s. 373.4145, F.S., was amended to phase in the ERP into Panhandle region.

ERP applications are reviewed by one of the six district offices of DEP or by one of the five WMDs in accordance with the division of responsibilities specified in operating agreements between the agencies.<sup>9</sup> In general, DEP reviews applications involving:

- docking facilities and attendant structures and dredging except when part of a larger plan of residential or commercial development;

- navigational dredging conducted by governmental entities except when part of a larger project that a WMD has responsibility to permit;
- systems serving only a single-family dwelling unit or residential unit except when part of a larger common plan of development;
- small, separate water-related activities such as boat ramps, mooring buoys, and artificial reefs unless part of a larger plan of development;
- systems located in whole or in part seaward of the coastal construction control line;
- waste facilities (solid, hazardous, domestic, and industrial waste facilities); and
- power plants, transmission and communication lines, and natural gas and petroleum exploration, production, and distribution lines and facilities.<sup>10</sup>

WMDs generally review permits for water-related facilities associated with upland development including roadways, residential, and commercial developments.

## **2. Wetland Resource Permit Program**

The Wetland Resource Permit Program (WRP), a precursor to the ERP, remains in effect only within the jurisdictional limits of the Northwest Florida Water Management District, and for certain activities grandfathered under Florida Law.<sup>11</sup> WRP regulates dredging, filling, or construction in, on or over waters and wetlands that are connected, either naturally or artificially, to “named waters.” Such waters include the Gulf of Mexico, bays, bayous, sounds, estuaries, lagoons, rivers, streams, and natural lakes that are not wholly owned by one person other than the State of Florida.<sup>12</sup>

## **B. Proprietary and Regulatory Authority<sup>13</sup>**

Prior to the merger into the DEP in the 1990s, the Department of Environmental Regulation had regulatory jurisdiction over certain activities affecting air, water, and land. The Department of Natural Resources had proprietary jurisdiction over uses of sovereign submerged lands. The following explains the regulatory and proprietary functions of DEP's Submerged Lands and Environmental Resources Program.

### **1. Regulatory**

The word “regulatory” refers to a type of authority that allows a government entity, such as DEP, to limit certain activities on private property, as well as on publicly owned lands, to some specific degree for the greater public good. DEP, in its regulatory capacity, is required by acts of the Florida Legislature to protect the natural resources of the state, such as air, water, and wildlife, to ensure that these resources will be healthy and abundant for present and future generations. DEP's Submerged Lands and Environmental Resources Program, including ERP, reviews applications for proposed works in wetlands and other surface waters, as well as works in uplands that can affect water quality and quantity, to ensure compliance with the Florida Administrative Code (F.A.C.) and Florida Statutes.

### **2. Proprietary**

Over a century ago, the Governor and Cabinet, as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, were designated by the Legislature as the Trustees of sovereign submerged lands.<sup>14</sup> All tidally influenced waters to the mean high water line and navigable fresh water bodies to the ordinary high water line in existence when Florida

obtained statehood in 1845 are considered sovereign.<sup>15</sup> In accordance with the Constitution of the State of Florida, these lands are held in trust by the state for all the people.<sup>16</sup> As the Trustees, the Governor and Cabinet have proprietary (ownership) authority over sovereign submerged lands and their uses and are responsible for ensuring that these lands and the associated aquatic resources remain healthy and in abundance for present and future generations.

The DEP and WMDs, in addition to their regulatory capacity, act as the staff to the Trustees in the review of proposed uses of sovereign submerged lands. A proposed development or related activities in waters that are not sovereign submerged lands are only required to meet regulatory standards. In comparison, a proposed activity located on sovereign submerged lands may be required to meet both regulatory and proprietary requirements as found in Florida Law.

Typical developments and related activities on sovereign submerged lands include construction of marinas, docks, piers, and seawalls and dredging of access channels. The largest projects are reviewed by the Board of Trustees, while DEP and WMDs have been delegated the authority to take action on most authorizations.<sup>17</sup>

### **C. Local Program Delegation of ERP**

Section 373.441, F.S., provides authority for DEP and WMDs to delegate all or a portion of the ERP Program to local governments. To implement this statutory authority, DEP adopted Rule 62-344, F.A.C., to guide local governments in the application process, and the criteria that must be used to approve or deny a delegation request. At this time, Broward County is the only local

government to have received a comprehensive delegated authority of part of the ERP from DEP and the SFWMD. Miami-Dade County has been delegated authority by the Trustees to issue Trustees' authorizations for activities that do not need an ERP.<sup>18</sup>

### **D. Classification of Florida Waters<sup>19</sup>**

The Federal Clean Water Act requires that the surface waters of each state be classified according to designated uses. Florida has five classes with associated designated uses, which are arranged in order of degree of protection required:<sup>20</sup>

- **Class I - Potable Water Supplies.** Fourteen general areas throughout the state including: impoundments and associated tributaries, certain lakes, rivers, or portions of rivers, used as a drinking water supply.
- **Class II - Shellfish Propagation or Harvesting.** Generally coastal waters where shellfish harvesting occurs.
- **Class III - Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife.** The surface waters of the state are Class III unless described in Rule 62-302.400, F.A.C.
- **Class IV - Agricultural Water Supplies.** Generally located in agriculture areas around Lake Okeechobee.
- **Class V - Navigation, Utility and Industrial Use.** Currently, there are not any designated Class V bodies of water. The Fenholloway River was reclassified Class III in 1998.

In addition to its surface water classification, water bodies may be designated as an Outstanding Florida Water (OFW) to ensure

water quality. A second additional designation is an Aquatic Preserve. An important distinction between these designations is that OFWs are regulatory and Aquatic Preserves are proprietary. Aquatic Preserves are designated to protect and preserve resources.<sup>21</sup> In general, waters with such designations receive higher levels of protection with more stringent permitting standards than other waters in Florida. The preponderance of OFW and Aquatic Preserve Waters are found in Class II and Class III waters.

### **1. Outstanding Florida Water**

An Outstanding Florida Water (OFW) is a water body designated by DEP as worthy of special protection because of its natural attributes.<sup>22</sup> This special designation is applied to certain waters, and is intended to protect existing good water quality. In general, DEP cannot issue permits for direct pollutant discharges to OFWs which would lower ambient (existing) water quality or indirect discharges which would significantly degrade the OFW. Permits for new dredging and filling must be clearly in the public interest and meet all criteria ensuring that the projects will have no adverse affects.<sup>23</sup>

Most OFWs are areas managed by the federal or state government as parks, including wildlife refuges, preserves, marine sanctuaries, estuarine research reserves, certain waters within state or national forests, scenic and wild rivers, or aquatic preserves. Generally, the waters within these managed areas are OFWs because the managing agency has requested this special protection. Waters that are not already in a state or federal managed area may be designated as "special water" OFWs if certain requirements are met, including a public process of designation.<sup>24</sup>

### **2. Aquatic Preserves**

Much of Florida's distinctive character lies in the beauty of its coastline. The best coastal landscapes have been set aside for protection as Aquatic Preserves under the Florida Aquatic Preserve Act of 1975.<sup>25</sup> The intent of the Act is to ensure that these:

*...state owned submerged lands in areas which have exceptional biological, aesthetic, and scientific values ... be set aside forever as aquatic preserves or sanctuaries for the enjoyment of future generations.*<sup>26</sup>

In general, the state imposes more stringent permitting criteria for projects proposed within Aquatic Preserves. A map of Florida's 41 Aquatic Preserve sites and listings are provided at the DEP website.<sup>27</sup> All but four of these preserves are located along Florida's 8,400 miles of coastline in the shallow waters of marshes and estuaries. Aquatic Preserve boundaries are found in s. 258.39, F.S.<sup>28</sup>

### **III. Consistency and Predictability in Dock and Marina Permitting**

Representatives of the federal, state, regional, and local governmental agencies concur with representatives of the marine contracting industry on the desirability of improving the consistency and predictability in dock and marina permitting in Florida. The study reviewed issues associated with dock and marina permitting as possible opportunities for improvement. The review considered the extent to which each issue confounds consistency and predictability in permitting, is perceived as significant, is amenable to change effecting desired improvements, and has widespread or limited impact.

## **A. Sources and Methods for Identifying Permitting “Improvements”**

Ascertaining what constitutes an “improvement” in the consistency and predictability in dock and marina permitting is somewhat subjective in that it requires a comparison of two or more experiences from a discrete position or perspective. As such, the study relies primarily on attitudinal and anecdotal data collected through interviews and surveys of marine contractors and consultants and field interviews with selected representatives of the marine construction industry.

Interviews were also conducted with staff from state, regional, and local government environmental permitting agencies. Agency records and documents provided additional information pertaining to permitting programs, DEP staffing levels, and related personnel issues.

## **B. Opportunities for Improvement in Dock and Marina Permitting**

Activities identified most frequently with improving the consistency and predictability in dock and marina permitting by the stakeholders, presented in **Table 1**, are: increase DEP staffing resources; improve DEP communications; establish state certification and licensure of marine

contractors; and require local governments to accept single-family dock self-certification. Issues less frequently identified include increase staffing resources of WMDs, establish a uniform method for the calculation of preemption areas, and develop an alternative to current conservation easement requirements in the permitting process. The more frequently identified activities are discussed below.

### **1. DEP Staffing Issues**

As listed in **Table 1**, the most frequently cited problem in the permitting process involve interactions between the marine construction industry and DEP staff engaged in the review of dock and marina permit applications. Negative experiences reported by the marine contractors and consultants include:

- Staff unsure or unfamiliar with current state permitting policies and agency rules;
- Inconsistent responses on the same issue by different staff within the same office;
- New staff assigned to a project without prior knowledge of the project, previous agreements made on some aspect of the project, or the project’s current status; and
- Inappropriate or illogical issues raised in Requests for Additional Information (RAIs).

<b>Table 1 Inventory of Opportunities to Improve Consistency and Predictability in Marina and Dock Permitting by Stakeholder Group</b>						
Issues	DEP		FMCA <sup>3</sup>	Field <sup>4</sup> Interviews	LCIR <sup>5</sup> Survey	Local <sup>6</sup> Government
	State <sup>1</sup>	District <sup>2</sup>				
Increase DEP Staffing Resources	X	X	X	High	High	X
Increase WMD Staffing Resources				Low	Low	
Improve DEP Communications	X	X	X	Medium	High	X
Establish State Certification and Licensure of Marine Contractors	X	X	X	High	High	X
Single-Family Dock Self-Certification Acceptance by Local Governments	X	X	X	High	High	X
Input by Professional Associations in Development of DEP “Guidance Documents”	X	X	X	High	Medium	
Uniform Calculation of “Pre-emption Areas”			X	Low	Low	
Alternative to Current Conservation Easement Requirements			X	Low	Low	

Source: Legislative Committee on Intergovernmental Relations, 2006.

Notes:

<sup>1</sup> DEP Division of Water Resource Management including Office of Submerged Lands and Environmental Resource Permitting and Division of State Lands.

<sup>2</sup> Southwest District, Central District, South District, and Southeast District.

<sup>3</sup> Materials provided by the Florida Marine Contractors Association (FMCA) and interviews with FMCA staff.

<sup>4</sup> Field interviews conducted with marine contractors and consultants located in the communities of Clearwater, Ft. Myers, Jacksonville, Naples, Pensacola, and unincorporated Pinellas County. “High”, “Medium”, and “Low” rating reflects frequency issue noted during interviews.

<sup>5</sup> Survey of 83 marine contractors and consultants distributed October 13, 2006. “High”, “Medium”, and “Low” ratings reflect survey response rates.

<sup>6</sup> Interviews with representatives from environmental regulation agencies in Clearwater, City of Sarasota, Pensacola, Duval County, Miami-Dade County, Orange County, Pinellas County, and Sarasota County.

A sampling of anecdotal evidence in support of the above experiences include: use of multi-family dock permitting standards in

the application for a single-family dock; an RAI for documentation that a single-family dock did not encroach more than 25 percent

across a 4-mile bay; requiring a water quality test several months after such a test was provided on an adjacent parcel; and an RAI regarding information provided in the initial permit application and subsequent RAI responses.

DEP administrators at the state and district levels note that the review of permit applications requires an inherent amount of discretion on the part of the reviewer in order to accurately match applicable standards to the proposed project. The type of problems cited by the marine contracting industry and substantiated by DEP managers are indicative of new, inexperienced staff assuming permitting review responsibilities. DEP administrators blame high turnover rates among permitting review staff as the source of this problem.

#### **a. Turnover in DEP Permit Review Staff**

Position classifications for DEP staff assigned to the dock and marina permit application review include the positions of Environmental Specialists, Environmental Supervisor, Environmental Manager, and Professional Engineer. Employment reviews by two state agencies indicate relatively high turnover rates in DEP staff employed in these positions. In the first review, DEP estimated an overall turnover rate of 41 percent in these positions in FY 2005-2006.<sup>29</sup> The highest turnover rates (50 percent) were reported for the entry level positions of Environmental Specialist I and II. DEP district managers reported even higher turnover rates in permitting reviewers, including turnover rates of between 50-75 percent for entry level staff with less than two years experience.

In the second report, DMS identified ten state agencies with the same environmental position classifications as DEP and calculated FY 2005-2006 turnover rates in

the positions for each agency. (See **Table 2**) In general, turnover rates for these positions, particularly for the entry level Environmental Specialist I, II, and III positions, are as high as or higher at DEP than other state agencies. DEP also demonstrated generally higher turnover rates at the Supervisor and Managerial levels than the other agencies.

It is somewhat noteworthy that DEP staff turnover rates presented in the DMS report are significantly lower than those rates reported by DEP. This discrepancy in rates is attributed primarily to the method used in calculating staff turnover. As noted in **Table 2**, DMS calculates turnover by counting the positions at the beginning and ending timeframe to arrive at the average and then counts separations to calculate the percentage. In contrast, DEP's report considered only employees directly involved in the review of relevant permit applications and counts the number of times each of those positions was vacant during the year.

#### **b. Reasons for DEP Turnover Rates**

Wages and workloads are identified as the two major reasons for high turnover rates among DEP environmental permitting staff.

<b>Table 2 Turnover Report – Environmental Classifications</b>						
Classification	Agency	Position Count			Separations	Turnover Percent
		2005	2006	Average		
Environmental Specialist I	DEP	123	133	128	31	24.2
	DACS	161	149	155	3	1.9
	DOT	4	4	4	1	25.0
	DCF	2	1	1.5	0	0
	DMA	4	4	4	0	0
	DOH	296	271	283.5	66	23.3
Environmental Specialist II	DEP	230	230	230	36	15.7
	DACS	78	80	79	8	10.1
	DCA	1	0	0.5	0	0
	DOT	7	7	7	0	0
	DMA	2	2	2	0	0
	DOH	59	64	61.5	7	11.4
Environmental Specialists III	DEP	245	254	249.5	20	8.0
	DACS	44	43	43.5	3	6.9
	DOE	1	1	1	0	0
	DOT	21	22	21.5	1	4.7
	DMA	2	2	2	2	100.0
	DOH	59	64	61.5	7	11.4
Environmental Supervisor I	DEP	0	1	0.5	0	0
	DACS	26	26	26	3	11.5
	DOH	46	45	45.5	0	0
Environmental Supervisor II	DEP	13	17	15	2	13.3
	DOT	3	3	3	0	0
	DOH	51	58	54.5	2	3.7
	DMS	1	1	1	0	0
Environmental Manager	DEP	149	151	150	13	8.7
	DACS	43	41	42	2	4.8
	DMA	3	3	3	0	0
	DOH	72	74	73	2	2.7
Professional Engineer III	DEP	46	47	46.5	1	2.2
	DOE	0	0	0	0	0
	DOT	67	64	65.5	2	3.1
	DCF	2	2	2	0	0
	PSC	1	1	1	0	0
	DOH	3	5	4	0	0
	DC	5	5	5	0	0

Source: Department of Management Services, September 2006 and LCIR.

Notes:

DEP - Department of Environmental Protection, DACS – Department of Agriculture and Consumer Services, DOT – Department of Transportation, DOE – Department of Education, DCF – Department of Children and Families, DMA – Department of Military Affairs, DOH – Department of Health, DCA – Department of Community Affairs, DMS – Department of Management Services, PSC – Public Service Commission, and DC – Department of Corrections.

- **Wages.** Wage data comparing annual average wages paid to DEP personnel to wages paid to workers in similar positions in the private sector are presented in **Table 3**.<sup>30</sup> As noted, average annual pay for DEP workers in environmental occupations are significantly lower than for comparable positions in the private sector. DEP Environmental Specialists average annual wage is \$36,130 or \$11,000 less than Environmental Specialists in the private sector. Professional Engineers at DEP earn an average of \$60,598 annually or \$8,785

below average annual earnings of private sector environmental engineers. Environmental Managers and Supervisors at DEP earn an average of \$43,590 annually or less than one-half (47 percent) the average annual income of private sector managers and supervisors. Based on salary and the number of authorized positions, DEP personnel in the environmental occupation classifications collectively receive an estimated \$14,000,000 less in annual pay than non-governmental workers in similar positions.

<b>Table 3</b>			
<b>DEP and Private Sector Wage Comparison</b>			
<b>By Environmental Occupation Classification</b>			
Occupation	Private Average Pay	DEP Average Pay	Difference in Pay
Environmental Specialist <sup>1</sup>	\$47,075	\$36,130	\$10,945
Manager/Supervisor <sup>2</sup>	\$94,437	\$43,590	\$50,847
Professional Engineer <sup>3</sup>	\$69,383	\$60,598	\$8,785

Source: Florida Agency for Workforce Innovation, Labor Market Statistics, Occupational Employment Statistics Program; Department of Environmental Protection, Division of Water Resource Management, Legislative and Budget Coordination; and LCIR.

Notes:

<sup>1</sup> Private sector occupations: Civil and Environmental Technicians; Microbiologists; Zoologists; Wildlife Biologists; Environmental Scientists and Specialists, including Health; Geoscientists; Hydrologists; Biological Technicians; Environmental Science and Protection Technicians, including Health. DEP positions: Environmental Specialist I, II, and III.

<sup>2</sup> Private sector occupations: Engineering Managers; and Natural Science Managers. DEP positions: Environmental Supervisor I and II; and Environmental Manager.

<sup>3</sup> Private sector occupations: Civil Engineers and Environmental Engineers. DEP positions: Professional Engineer III.

- **Workload.** Workload data for the marine construction industry workforce are unavailable and thus preclude a comparison in workload with DEP permit review staff. However, comparisons can be made regarding changes in DEP workloads between FY 1998-1999 through FY 2004-

2005.<sup>31</sup> Workload is assessed at the agency level and on a per employee level in terms of the number of permit applications received per DEP district or the permit review staff person.

The number of total permit applications received by DEP is presented in **Table 4**.

Overall, DEP office workload, as measured by total applications received, increased from 9,179 applications in FY 1998-99 to 12,136 applications in FY 2004-05, representing an increase of more than 32 percent. DEP districts exhibiting the largest

increases in workload during this time are the South District (82 percent), Tallahassee (51 percent), and the Central District (40 percent). Applications received by the Northeast District declined by 5 percent at this time.

**Table 4**  
**Total Permit Applications Received By DEP Districts and Tallahassee Office for FYs 1998-99 – 2004-05<sup>1</sup>**

District <sup>2</sup>	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
CD	977	1,208	1,212	1,223	1,218	1,442	1,375
NED	939	991	879	773	896	1,188	890
NWD	2,371	2,431	2,489	2,591	2,627	3,167	2,859
SD	1,838	1,971	2,154	2,431	2,811	3,021	3,347
SED	1,710	2,012	2,206	1,953	2,071	2,040	1,994
SWD	1,221	1,189	1,248	1,598	1,792	1,466	1,419
TAL	123	190	183	253	220	293	252
<b>Total</b>	<b>9,179</b>	<b>9,992</b>	<b>10,371</b>	<b>10,822</b>	<b>11,634</b>	<b>12,617</b>	<b>12,136</b>

Source: by DEP, Office of Submerged Lands and Environmental Resource Permitting, June 2006.

Notes:

<sup>1</sup> Includes applications for exemptions, wetland boundary determinations, general permits, individual permits, mangroves, stormwater exemptions, stormwater individual, stormwater general permits, and variances.

<sup>2</sup> CD - Central District, NED - Northeast District, NWD - Northwest District, SD - South District, SED - Southeast District, SWE - Southwest District, TAL - Tallahassee Office.

Information regarding the number of files received per employee between FY 1998-99 and 2004-05 is presented in **Table 5**. In

general, workloads per employee closely reflect district workload rates during this time period. The largest increases were reported in the South

**Table 5**  
**Application Files Received Per Staff Person By DEP Districts For FYs 1998-99 – 2004-05<sup>1</sup>**

District <sup>2</sup>	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
CD	39	48	48	49	49	58	55
NED	39	41	37	32	37	50	37
NWD	62	64	66	68	69	83	75
SD	77	82	90	101	117	126	139
SED	59	69	76	67	71	70	69
SWD	44	42	45	57	64	52	51

Source: by DEP, Office of Submerged Lands and Environmental Resource Permitting, June 2006.

Notes:

<sup>1</sup> Includes applications for exemptions, wetland boundary determinations, general permits, individual permits, mangroves, stormwater exemptions, stormwater individual, stormwater general permits, and variances.

<sup>2</sup> CD - Central District, NED - Northeast District, NWD - Northwest District, SD - South District, SED - Southeast District, SWE - Southwest District.

District where files received per employee rose from 77 to 139 between FY 1998-99 and 2004-05. Only the Northeast District experienced a slight decrease in per employee workload from 39 to 37 files received.

There are two important caveats with the per staff person data. First, individual projects can vary in complexity and the amount of work and actions required by staff (e.g., decision elevated to the Board of Trustees, actions litigated, and project changes and amendments). Second, files received per staff person do not account for staff vacancy rates. As such, actual workloads per employee are greater until open positions are filled. For these reasons, it is somewhat difficult to fully appreciate staff workload solely from file assignment statistics.

Florida's environmental permitting programs and the marine construction industry benefit from reducing turnover and promoting longevity for DEP permit review staff. Reduced turnover translates into more experienced staff familiar with the permitting process and procedures, environmental and hydrological conditions, and relevant marine, wetlands, and wildlife protection and preservation levels within local geographical areas. Experienced staff is also able to develop professional relationships and rapport with marine contractors and consultants. Such relationships generate trust and confidence in DEP staff to utilize their professional discretion to clarify and resolve issues of concern regarding permit applications in an expeditious and informal manner, as appropriate.

***Recommendation 1: Increase staffing resources to enable DEP to attract, train, and retain qualified staff involved with the***

***ERP and related wetlands permit programs at the state and district levels.***

***Recommendation 2: Direct DEP to conduct a salaries study for environmental permitting staff and to submit a plan to the Legislature by November 1, 2007, that implements a pay parity compensation plan not to exceed three years beginning fiscal year 2008 that is comparable to similar positions within WMDs, local governments, and the private sector marine construction industry.***

**2. DEP Communications and Technology**  
DEP's responsiveness to permitting issues can be enhanced through better use of existing technologies. Currently, most permit applications are submitted to DEP on paper via the mail service or hand delivered to district offices. Representatives of the marine industry and DEP staff have expressed frustration with applications and documents being misplaced or lost, or otherwise unavailable when questions arise regarding provisions within the applicant file.

Marine contractors and consultants report that it is not unusual to resubmit accompanying documents to permit applications. Permit review staff acknowledge that applicants are sometimes required to submit additional materials, but it is unclear whether this is due to DEP error or the permit applicant. Both groups agree that the need for additional materials, or RAIs, is exacerbated when an application review is reassigned due to DEP staff turnover.

Greater use of computers and electronic submission of permit application, supporting materials, and online payment of permit application fees improves the efficiency and

effectiveness of permitting programs and overall service to all users. DEP currently accepts certain types of permit applications on-line and provides authorization for certain types of water related projects, such as the Single-Family Dock Self-Certification program, noted below. However, DEP's e-permitting program can encompass a greater range of permitting and other programs.

The St. John's River Water Management District (SJRWMD) and the South Florida Water Management District (SFWMD) have implemented e-permitting programs.<sup>32</sup> The SJRWMD's program was implemented in phases over a five year period (2001-2005). District staff estimates that implementation and management costs through the end of the current fiscal year will total approximately \$1.7 million.<sup>33</sup> Using the SJRWMD model as a template, SFWMD implemented its program over a three-year period at an estimated cost of \$1.4 million.<sup>34</sup>

Representatives of the WMDs report general success and satisfaction with e-permitting. Benefits of the program include: improved staff efficiency by reducing staff time to process compliance forms; reduced paperwork; improved customer service; reduced transaction costs; elimination of data transcription errors; and improved access to the data. In addition, the WMDs report an overwhelming satisfaction with public access to the permitting databases created under the e-permitting programs.

***Recommendation 3: Direct DEP to develop a project management plan to implement the remaining phases of an e-permitting program that allows for timely submittal, processing and exchange of permit application and compliance information that yields positive benefits in support of DEP's mission, permit applicants, permit holders, and the public. The plan shall***

***include an implementation timetable, estimated costs, and transaction fees.***

***Recommendation 4: Direct DEP to encourage permitting review and compliance staff to utilize e-mail whenever appropriate in the RAI process.***

### **3. Single-Family Dock Self-Certification**

A third frequently cited problem in the permitting process, as noted in **Table 1**, concerns local governments' non-acceptance of self-certification for certain types of projects and activities that are exempt from DEP permitting. Section 403.813(2), F.S., and Rules 62-312.823, 62-341.428, and 18-21, F.A.C., identify projects and water-related activities that are exempt from permitting requirements. Such projects include, among others, private docks with 500 square feet or less of over-water surface area for a dock which is located in an area designated as OFWs or 1,000 square feet or less of over-water surface area for a dock which is located in an area which is not designated as OFWs.<sup>35</sup>

It should be noted that in addition to using the Self-Certification process, a project may require additional authorization before a dock is permitted. For example, certain projects may require federal authorization obtained through the COE.<sup>36</sup> Docks built on state-submerged lands require a letter of consent to use the State's submerged lands.<sup>37</sup> In order to qualify for this letter, an application must be submitted to DEP indicating that the dock will meet a number of requirements.<sup>38</sup>

Interviews with all stakeholder groups, including representatives from local government environmental permitting agencies, and surveys of marine contractors indicate that local governments often do not accept self-certification for permit exempt

projects identified in statute, rule, or listed in DEP's Self-Certification Process for Single-Family Docks.<sup>39</sup> Rather, local governments require a "signature" from DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification.

Current law neither requires nor provides for a "signature" from DEP as an alternative or supplemental to Self-Certification. As a result, when DEP receives a request for a "signature" letter verifying the exempt status of a Self-Certification project, staff is required to conduct a standard review as they would with any permit application. Verification of the exemption status of a Self-Certification project would negate the intent of Self-Certification.

In addition to saving DEP resources, local governments' acceptance of Self-Certification would shorten the time and reduce costs associated with the construction of these exempt docks. More than 73 percent of the respondents in the marine contractor survey indicated their business would benefit from local governments' acceptance of the Self-Certification process. Benefits identified in the survey include improved efficiency in work crew assignments and administrative overhead; improved relationships with homeowners and staff from local government permitting agencies and DEP offices; and lower costs for marine construction materials. Representatives of local government permitting agencies responded that local acceptance of the Self-Certification exemption criteria would expedite the local permitting process and reduce the wait time an average of two to three months.

While the public may at times benefit from the additional review of a Self-Certification project, such reviews deflect the purpose for

Self-Certification process which recognizes that some docks have minimal environmental impacts because of their size and location and do not require written authorization.<sup>40</sup>

***Recommendation 5: Clarify in s. 403.813, F.S., and in relevant rules administered by DEP that single-family docks and other relevant projects meeting the exemption criteria in Self-Certification do not require further verification by DEP in order to be accepted by local government permitting authorities.***

#### **4. Marine Contractor Certification and Licensure**

Currently, Florida marine contractors are unregulated by the state. Prior to 1993, Florida Statutes provided for registration of all local construction specialty licenses with the Construction Industry Licensing Board (Board). The licenses were reflected as "registered specialty (RX)" licenses and included various categories, including "marine contractor" based upon the locales that issued such licenses. In 1993, Florida Statutes were amended to provide that a person who held a local license whose scope of work did not substantially correspond to one of the categories of licensure defined under s. 489.105(3)(a)-(o), F.S., Definitions, was not required to register with the board. Marine specialty contractors were never defined within s. 489.105(3)(a)-(o), F.S. As such, the department ceased issuing registered specialty licenses for marine contracting after 1993.

In recent years, the Board has taken the position that, absent a specialty license for marine contracting issued by a local construction regulation board, marine contracting requires a Florida-certified or registered general, building or residential license.

When asked by LCIR staff, representatives of the marine construction industry and public permitting authorities agreed that marine contractors should be certified and licensed by the state. Interviews with marine contractors and consultants and with DEP staff at the state and district levels emphasized the unique skills and knowledge required to build in and over submerged lands and adjacent wetlands that are safe for the public and property owners, and that preserve and protect the wildlife and other natural resources essential to the health of Florida's wetlands environment and ecosystems.

Survey responses from representatives of the marine construction industry, including the FMCA, identified several critical deficiencies in the current level of regulation of their industry. These respondents estimated that for marine construction work statewide:

- Only 36 percent is performed by state certified and licensed general contractors;
- 53 percent is done without all required permitting; and
- 52 percent is done without all required insurance including workers' compensation and longshoreman.

In addition, many contractors report difficulties in competing against contractors unencumbered with state permitting standards and insurance requirements. Although several contractors and consultants commented that a significant percentage of their work involves projects originally undertaken by other contractors, the majority reported they no longer submitted bids for certain types of marine construction projects, due to unfair competition from

contractors operating outside of state permitting laws.

DBPR is responsible for protecting the well-being of Florida's residents and visitors through the regulation of various professions. Section 11.62, F.S., creates the "Sunrise Act" which provides a process for assessing whether the State should regulate a profession. The Division of Professions within DBPR is responsible for regulating professional licensees through education and compliance. This division administers 14 professional boards, three department-regulated professions, one council and one commission. The Division of Regulation is responsible for enforcement of professions and related businesses licensed by DBPR under the Division of Professions to ensure that the laws, rules, and standards set by the Legislature are followed.

The Board has broad rulemaking authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., in order to carrying out its responsibilities regarding certification and licensure of individuals and organizations working in the contracting industry.<sup>41</sup> The Board is specifically authorized, by rule, to designate various types of specialty contractors, as defined in s. 489.105(3)(q), F.S., that can be certified in the industry.<sup>42</sup>

If the Board establishes a certified specialty category for marine contracting, individuals or businesses engaged in that activity would be required to obtain the state certified license or, at a minimum, the appropriate local competency license. A local license would limit the contractor to offering services in the county or city for which that license was issued. In the absence of a local license, the contractor would be required to obtain the state certified license.

***Recommendation 6: Encourage the FMCA to request that DBPR develop certification and licensure standards for marine contractor as a category of specialty contractor defined in s. 489.105(3)(q), F.S., and that the Board, by rule, designate the marine contractor as a type of specialty contractor which may be certified pursuant to the provisions of s. 489.113(6), F.S. The Florida Association of Counties, Florida League of Cities, and other appropriate organizations including DEP and WMDs are encouraged to participate in this undertaking. The DBPR shall notify the Florida Legislative Committee on Intergovernmental Relations when the rule is established.***

## **5. Local Identification of Mitigation Projects**

A proposed marine construction project is subject to regulatory mitigation requirements, and if using state submerged lands, proprietary or public interest mitigation requirements as well. A regulatory mitigation is essentially an action or series of actions to offset the adverse impacts to the environment from the proposed project. In contrast, public interest mitigation may be viewed as compensation to the state and the citizens of Florida for use of sovereign submerged lands in addition to actions to offset adverse impacts to sovereign lands and associated resources from the proposed project.

**a. Regulatory Mitigation.** Section 373.414(1)(a), F.S., provides seven criteria for determining whether the regulated activity is not contrary to the public interest or is clearly in the public interest. If the applicant is unable to otherwise meet these criteria, DEP or the WMD, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects that

may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136, F.S. It shall be the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

Pursuant to s. 373.414(18), F.S., DEP and each WMD responsible for implementation of the environmental resource permitting program shall develop a uniform mitigation assessment method (UMAM) for wetlands and other surface waters. UMAM provides an exclusive and consistent process for determining the amount of regulatory mitigation required to offset impacts to wetlands and other surface waters, and which supersedes all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts.<sup>43</sup>

The UMAM method is binding on DEP, WMDs, local governments, and any other governmental agencies and is the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. WMDs and any other governmental agency subject to ch. 120, F.S., may apply the UMAM without the need to adopt it pursuant to s. 120.54, F.S. One goal of UMAM is for it to be practical for use within the timeframes provided in the permitting process and results in a consistent process for determining mitigation requirements.

Representatives from DEP state and district offices report that UMAM is not as practical in practice as was intended. It has simply

shifted the discussion away from how to measure adverse impacts to how to determine UMAM “scores.” A common concern of DEP staff, as well as local governments and marine contractors and consultants, is that identifying appropriate projects or activities to serve as mitigation continues to be based on guesswork and time consuming negotiations with permit applicants.

**b. Public Interest Mitigation.** Section 253.12, F.S., recognizes the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (Trustees) are authorized to sell and convey sovereign submerged lands if it has determined such actions to be in the public interest, upon such prices, terms, and conditions as it sees fit. However, prior to consummating any such sale, the Trustees require studies to determine the extent to which the sale or conveyance of submerged lands, and the resulting activities, will have on marine and wildlife, habitats, other natural resources, and other factors affecting the public interest.

Specific policies, standards, and criteria for determining whether a proposed project “is not contrary to the public interest”, or if in waters designated Aquatic Preserves, the higher standard of “in the public interest” are provide in Rule 18-21, F.A.C., for sovereign submerged lands and Rule 18-20, F.A.C., for Florida Aquatic Preserves. “Public interest” is defined to mean demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands, the Board shall consider

the ultimate project and purpose to be served.<sup>44</sup>

In general, activities which would result in significant adverse impacts to sovereignty lands and associated resources are not approved unless there is no reasonable alternative and adequate mitigation is proposed.<sup>45</sup> Mitigation is defined to mean an action, series of actions, or activity that will offset adverse impacts to sovereign submerged lands. Examples of mitigation include such activities as building or repairing public boat ramps, mangrove planting, setting channel markers, or providing artificial marine habitat systems to promote restoration of waters and marine fishery resources. Cash payments are not considered as mitigation unless payments are specified for use in a previously identified, DEP endorsed, environmental or restoration project and the payments initiate a restoration project or supplement an ongoing restoration project.<sup>46</sup>

As in the case of regulatory mitigation, identifying projects to meet the public interest requirement and serve as proprietary mitigation has proven difficult for all concerned parties. Based on interviews, environmental permitting staff at state and district levels is unsure when proposed activities are sufficient compensation and mitigation for a proposed marine construction project. In addition, staff repeatedly noted in interviews that they were often unaware of what public interest mitigation projects would be useful and appropriate for local communities.

The marine construction industry contend that permitting staff require the applicant to suggest a project or set of activities to meet the public interest and/or mitigation requirements only to be told that the proposed activities are insufficient. While

the expense of public interest and regulatory mitigation activities are sometimes identified by marine contractors as excessive relative to the type, size, and location of the proposed project, the most frequently cited problem in interviews and surveys is the uncertainty and unpredictability of what will be acceptable.

Environmental permitting staff and the marine construction industry would benefit from a transparent process for identifying activities to serve as public interest and regulatory mitigation projects.

***Recommendation 7. Direct county governments, with the assistance of local advisory councils, to identify projects and activities which serve as regulatory and public interest mitigation for dock and marina permitting and submit them for review and approval by DEP. DEP shall assist permit applicants in the selection of projects from this list that are appropriate mitigation for the proposed project in the permit. Local advisory committees shall be comprised of representatives from stakeholder groups in the public, private, and non-profit sectors.***

## **6. Development of DEP Guidance Documents**

DEP issued a "Guidance Document" on February 24, 2006 to clarify and further define policies relevant to use of ammonium copper quaternary (ACQ)-treated wood in Florida's wetlands and other surface waters. Interviews and surveys with FMCA and marine contractors and consultants expressed concern that the document was issued without notice or input from the marine construction industry or the Treated Wood Council (TWC).

On August 1, 2006, DEP staff met with representatives of TWC and FMCA and

accepted additional information on ACQ. Subsequent to a review of the TWC materials, DEP has not modified the recommendations contained in the February 24, 2006 guidance document. However, DEP met with TWC and FMCA representatives on January 8, 2007, expressed interest in continuing to work with both industries, and with their assistance, to conduct additional studies to generate data that may more closely represent the behavior of ACQ in Florida waters.

***Recommendation 8. Direct DEP to continue to request participation of appropriate professional associations when developing guidance documents regarding standards of marine building materials and construction methods prior to the issuance of the documents.***

## **IV. Florida Submerged Land Lease Fee Exemptions**

The DEP Submerged Lands and Environmental Resource Permitting Program is responsible for regulating activities on state-owned submerged lands. The Program also issues lease and consent of use agreements for commercial and privately owned docks built on state owned submerged lands. However, most privately owned docks associated with a single-family residence or condominium are exempt from paying submerged land lease fees.

### **A. Lease Fee Exemptions**

According to information provided by FMCA and DEP, the exemptions were granted by the Board of Trustees in the early 1980's after successful lobbying by boating industry interests. The exempt docks are generally less than 1,000 square feet in size.

This size dock was selected because surveys conducted in the early 1980s indicated that the most common dock size was 1,000 square feet or less. As a result, the rule was written stating that docks, which preempt no more than 1,000 square feet of sovereignty land area for each 100 linear feet of shoreline in the applicant's ownership, are exempt from paying submerged land lease fees.<sup>47</sup>

The vast majority of single-family docks built on state owned submerged land do not pay the state for the use of this land. Based on data provided by 58 of the 67 County Property Appraisers, in 2002 there were approximately 113,319 privately owned noncommercial docks associated with a single-family residence or individual condominium unit built on state owned submerged land in Florida.<sup>48</sup> However, only 212 (less than 1%) of these docks were required to pay submerged land lease fees to the state. The majority of docks (113,107 docks) are exempt from paying the lease fee. This results in the inequitable treatment of private dock owners because, while all these docks are using state submerged land, only a small minority is being charged to use the submerged land.

It is somewhat unclear why only a minority of dock owners should pay lease fees. The lease fee exemption appears to be contrary to Florida Law that says the state should be compensated for private use of state owned land.<sup>49</sup> One of the strongest statements supporting this idea is Rule 18-21.001(5), F.A.C., which states:

*To ensure that all public and private activities on sovereignty lands which generate revenue or exclude traditional public uses provide just compensation for such privileges.*

A private dock associated with a single-family residence or an individual condominium unit does not appear to qualify as a public use, therefore, the state should be compensated for the use of these submerged lands. Furthermore, the state is not prohibited from repealing the exempt status of these docks and collecting a submerged land lease fee. Therefore, the state does have the legal authority and rationale for assessing these docks a submerged land lease fee.

## **B. Lease Fee Considerations**

Three methods are used to examine submerged lands lease fees: 1) annual boat slip rental fees at Florida marinas; 2) lease fee rates for docks required to pay the fee; and 3) submerged lease fees in other states. Each of these methods is reviewed below.

### **1. Florida Marina Boat Slip Rent Rates**

Annual marina revenue data for 69 Florida marinas located throughout the state was provided by DEP's Division of State Lands. The annual marina revenue was divided by the number of boat slips to determine the average slip rental cost for each marina. Using this information the following information concerning the annual rent per boat slip was calculated:

#### Boat Slip Annual Rent Calculations

Average rent	\$3,726
Median rent	\$2,589
Highest rent	\$24,736
Lowest rent	\$61*

\*Only two marinas had annual rents less than \$100.

### **2. 2001 Dock Lease Fees in Florida**

According to the F.A.C., Florida's minimum annual submerged land lease fee was \$346 for docks required to pay the fee. However,

on a per square foot basis, DEP staff calculates that the lease rate for submerged land at \$0.138 per square foot. Based on the rule's exempt dock size of 1,000 square feet, this would generate a fee of \$138.

### 3. Submerged Lands Rental Rates in Other States

Nineteen states identified as levying some type of charge for docks on public submerged lands were surveyed regarding state submerged land lease fee policies of which eight states required all docks to pay a submerged land lease fee.<sup>50</sup> The most common annual fee charged was \$100 (3 states) and the median fee charged was \$75.

#### C. Lease Fee Options

The amount of revenue that could be generated annually from lease fees levied on the approximately 113,107 private docks located on state submerged lands, but not paying fees is presented below. Based on the above lease fee review, calculations are presented for annual lease fee rates of \$75, \$100, and \$125.

Lease Rate	Number Exempt	Docks Annual Lease Collections
\$ 75.00	113,107	\$ 8,483,825
\$100.00	113,107	\$11,310,700
\$125.00	113,107	\$14,138,375

In order to achieve equity among dock owners, ensure that the state is reimbursed for the private use of public lands, and provide the additional staffing and technology resources for DEP, the Legislature should consider abolishing the submerged land lease fee exemption that applies to most private docks in Florida.

Whichever user fee the Legislature selects, it is recommended that this fee be a flat or single fee because it is much easier and less

costly for program staff to implement and administer that the formula used to calculate submerged land lease fees.

**Recommendation 9:** *The Legislature should consider abolishing the submerged land lease fee exemptions and levy a flat fee or single fee that would apply to all single-family and multi-family docks and piers that are currently not accessed lease fees with 70 percent of the proceeds appropriated to DEP for implementation of pay parity compensation plan and completion of e-permitting program. The remaining 30 percent of the proceeds shall be deposited into the Marine Resources Conservation Trust Fund to be used for enhancement of public boating access to include: property acquisition, construction and maintenance of publicly owned boat ramps, docks and associated parking facilities directly and through grants to counties and municipalities as established in s. 370.0603(4)(c), F.S.*

#### D. Additional Suggestions for Program Implementation

The program's current procedure for processing payments is expensive, labor intensive, and the computer software program is obsolete and cannot be upgraded to process the 113,107 new dock fee payments. Therefore, it may be appropriate to implement the following program administration process.

##### 1. Identifying Dock Owners and Submitting User Fee Notice

Annually, the County Property Appraisers and Tax Collectors would send a list of single-family and condominium units with private docks to DEP. This list would contain all information necessary to send the dock owner the user fee billing notice. DEP could contract with a private firm to print

and mail the billing notice, or with additional resources and technology, develop the capacity itself. DEP could then contract with the Department of Revenue (DOR) to receipt the payments and electronically transfer the funds and associated payment data to DEP to update their databases. The total cost to bill and receipt the payments was estimated in 2002 at \$0.64 per dock for a total cost of \$72,388. Assuming costs have increased as much as 33 percent to \$1.00 per dock, the total cost would be \$113,107. In addition, it would be more efficient to do all the billings once a year as opposed to spreading them out over a 12 month period.

## **2. Compliance**

Compliance is not anticipated to be a problem. DEP's Division of State Land staff report payment compliance by the 212 single-family residences with docks paying submerged land lease fees to be 85 to 90 percent. Reports from other states with similar programs indicate compliance is not problematic.

## **3. Petition for Exemptions**

The implementation of this program may present some difficulties, as do most new processes, and will likely require additional DEP staff time for the first year. For example, in some cases individuals own the submerged land the dock is built on, not the state, and therefore do not have to pay the submerged land user fee. In the past the state has deeded ownership of submerged land to these individuals. These individuals will have to petition DEP for an exemption from the user fee because the County Property Appraiser's records may not contain this information.

In a second example, some docks will have been mostly destroyed by nature, are not usable and these owners no longer want a

dock. These owners are no longer using submerged state lands. Thus, these owners could petition DEP to have their consent of use letter declared no longer valid and that they are not using sovereign state lands. In both cases DEP staff, either in Tallahassee or at the district offices will have to process these petitions.

## **4. Financially-Based Exemptions**

There may be instances where homeowners are on fixed low incomes and the fee might be a financial burden. In these situations, when the homeowner has established with the County Property Appraiser that they are financially disadvantaged for ad valorem tax purposes, then they could be considered for some type of submerged land user fee relief similar to the relief that is granted for ad valorem taxes.

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<sup>1</sup> Legislative Committee on Intergovernmental Relations, *Access to Florida Waters: Marina and Dock Permitting, Public Boat Ramps and Port Expansion*, March 2006, Recommendation 11, p. 10.

<sup>2</sup> Sections 2 and 3, Chapter 2005-273, L.O.F.; Sections 1, 2, 10, 11, 12, and 14, Chapter 2005-157, L.O.F.; Section 6, Chapter 2005-168, L.O.F.

<sup>3</sup> Information on the FWC “Boating Infrastructure Study” provided by Major Jim Brown, Office of Boating and Waterways, and the Legislative Affairs Office, FWC.

<sup>4</sup> This section draws upon information presented during the Florida Marine Contractors Association Annual Conference, October 14, 2006, by Steven H. Denman, Esq. and Juan C. Villaveces, Esq., Abel Band Chartered, *Permitting In and Around Florida Waters*, October 14, 2006; and the following DEP websites: <http://www.dep.state.fl.us/water/wetlands/erp/wmd.htm><http://www.dep.state.fl.us/water/wetlands/erp/propvreg.htm>  
<http://www.dep.state.fl.us/water/wetlands/erp/ssl.htm>;  
<http://www.dep.state.fl.us/water/wetlands/erp/rules/guide.htm>;

<sup>5</sup> The Environmental Resource/Wetland Resource Permit Programs are authorized in Chapters 253, 258, Part IV, Chapter 373, and section 403.814, Florida Statutes.

<sup>6</sup> Clean Waters Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.

<sup>7</sup> Sections 373.103(8) and 373.441, Florida Statutes, authorize ERP responsibilities to local governments; Chapters 125 and 163, Florida Statutes, grant authority to issue and regulate building permits to county and municipal governments, respectively; and other local permitting authorities may be established with interlocal agreements pursuant to s. 163.01, F.S.

<sup>8</sup> Section 373.4145, Florida Statutes; see <http://www.dep.state.fl.us/water/wetlands/erp/erp.htm>

<sup>9</sup> Sections 373.103 and 403.814, Florida Statutes; Operating Agreements between DEP and the WMDs are provided at the DEP website: <http://www.dep.state.fl.us/water/wetlands/erp/rules/guide.htm>.

<sup>10</sup> See <http://www.dep.state.fl.us/water/wetlands/erp/wmd.htm>.

<sup>11</sup> Section 373.4145, Florida Statutes. Activities which are grandfathered are identified in s. 373.414(11), (12)(a) and (13) – (16), F.S. The WRP was originally authorized pursuant to the Warren S. Henderson Wetlands Protection Act in 1984, found in ss. 403.91 - 403.929, F.S. Effective July 1, 1993, the Florida Environmental Reorganization Act of 1993 (Chapter 93-213, Laws of Florida) merged that former wetland resource program with the Management and Storage of Surface Waters (MSSW) program in Part IV of ch. 373, F.S., to create the Environmental Resource Permit (ERP) Program. Section 373.414(9), F.S., required DEP and the WMDs to adopt rules to incorporate the provisions of s. 373.414, F.S., to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part recognizing that variations in permitting criteria in the rules of individual WMDs or DEP were permitted to address differing physical or natural characteristics. Section 373.414(9), F.S., further provided that until rules adopted pursuant to this subsection became effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91 - 403.929, F.S., are authorized and shall remain in full force and effect. DEP and the WMDs adopted the above rules by September 1994. Once the ERP rule was activated, the wetland resource program remained in effect only for activities within the jurisdictional limits of the Northwest Florida Water Management and activities which are grandfathered according to s. 373.414(11), (12)(a) and (13) - (16), F.S.

<sup>12</sup> <http://www.dep.state.fl.us/water/wetlands/erp/erp.htm>

<sup>13</sup> <http://www.dep.state.fl.us/water/wetlands/erp/propvreg.htm>.

<sup>14</sup> Section 253.02, Florida Statutes.

<sup>15</sup> Section 11, Article X, of the Florida State Constitution; ss. 177.26 and 177.28, and 253.03(8)(b), F.S.

<sup>16</sup> Section 7, Article II and Section 11, Article X, of the Florida State Constitution; and s. 253.001, F.S.

<sup>17</sup> Section 18-21.0051, F.A.C., also known as the Delegation Rule identifies where decision-making authority is delegated to DEP and WMDs and for which type of projects it remains with the Board of Trustees.

<sup>18</sup> Discussions with representatives from DEP and the Miami – Dade County Department of Environmental Resource Management; <http://www.dep.state.fl.us/water/wetlands/erp/rules/local.htm>

<sup>19</sup> <http://www.dep.state.fl.us/water/wqssp/ofw.htm>

<sup>20</sup> Rule, 62-302.400, F.A.C.

<sup>21</sup> Rule, 62-302.700, F.A.C.

<sup>22</sup> Section 403.061(27), Florida Statutes.

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- <sup>23</sup> <http://www.dep.state.fl.us/water/wqssp/ofwfs.htm>
- <sup>24</sup> DEP identifies 41 current “special water” designations. See <http://www.dep.state.fl.us/water/wqssp/ofwfs.htm>
- <sup>25</sup> Part II, Chapter 258, Florida Statutes.
- <sup>26</sup> Section 258.36, Florida Statutes
- <sup>27</sup> <http://www.dep.state.fl.us/coastal/sites/>
- <sup>28</sup> Additional Florida Rules governing Aquatic Preserves are found at Rules: 18-18 Biscayne Bay Aquatic Preserve; 18-20 Florida Aquatic Preserves; and 18-21 Sovereignty Submerged Lands Management, F.A.C.
- <sup>29</sup> Materials provided by Geof Mansfield, Florida Department of Environmental Protection, Division of Water Resource Management, August 2006.
- <sup>30</sup> Data on private sector wages were provided by Florida Agency for Workforce Innovation, Labor Market Statistics, Occupational Employment Statistics Program; Salary data for relevant positions at DEP were provided by Department of Environmental Protection, Division of Water Resource Management, Legislative and Budget Coordination. Average annual wages were calculated by LCIR.
- <sup>31</sup> DEP permit workload application data provided by DEP, Office of Submerged Lands and Environmental Resource Permitting, June 2006.
- <sup>32</sup> SJRWMD e-permitting website: <https://permitting.sjrwmd.com/epermitting/jsp/start.jsp>;  
SFWMD e-permitting website: <https://my.sfwmd.gov/portal/>
- In addition, Florida’s five WMDs have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate district’s Web site for obtaining information regarding the districts’ permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits). See: <http://www.flwaterpermits.com/>
- <sup>33</sup> Information provided by SJRWMD, Department of Information Resources, January 2007.
- <sup>34</sup> Information provided by SFWMD, Natural Resources Management Division, January 2007.
- <sup>35</sup> Section 403.803(2)(b)1., Florida Statutes.
- <sup>36</sup> The U.S. Army Corps of Engineers E-app website can be used to apply for any required federal authorization: <https://epermit.usace.army.mil/>.
- <sup>37</sup> Section 253.03(7), Florida Statutes.
- <sup>38</sup> Rule 18-21.007, F.A.C.
- <sup>39</sup> DEP’s self-certification process on-line program is located at: <http://appprod.dep.state.fl.us/erppa/>; A complete listing of criteria for exempt projects is provided in DEP’s *Single Family Dock Construction* pamphlet provided at: [http://www.dep.state.fl.us/northeast/wetlands/PDF/SF\\_dock\\_pamphlet.pdf](http://www.dep.state.fl.us/northeast/wetlands/PDF/SF_dock_pamphlet.pdf).
- <sup>40</sup> DEP *Single-Family Dock Construction* pamphlet.
- <sup>41</sup> Section 489.108, Florida Statutes.
- <sup>42</sup> Section 489.113(6), Florida Statutes.
- <sup>43</sup> Rule 62-345, F.A.C.
- <sup>44</sup> Rules 18-20.003(46) and 18-21.003(46), F.A.C.
- <sup>45</sup> Rule 18-21.004(2)(b), F.A.C.
- <sup>46</sup> Rule 18-20.003(35), F.A.C.
- <sup>47</sup> Chapter 18-21.005(1)(a)2, F.A.C.
- <sup>48</sup> 2002 survey of 67 County Property Appraisers with 65 counties responding of which 58 counties were able to provide dock information.
- <sup>49</sup> Sections 253.03, 253.12, and 253.12, Florida Statutes; Chapter 18-21.001(5), F.A.C.
- <sup>50</sup> States with submerged land lease fees for all docks include: Kentucky, Maine, New Jersey, Ohio, Oregon, Texas, Utah, and West Virginia. Other states surveyed were: California, Georgia, Idaho, Michigan, Montana, New York, North Carolina, Rhode Island, Tennessee, Vermont, and Washington. Other Florida Legislative entities assisted in collection of this information.