WHEREAS SȾÁUTW̱ First Nation has inherent rights, customs, traditions and the inherent right to self-government as defined in the Douglas Treaty and reinforced through Section 35 of the *Constitution Act, 1982* and Articles 3, 20, 23, 29 and 32 of the *United Nations Declaration on the Rights of Indigenous Peoples* (the "Declaration");

AND WHEREAS the Declaration *on the Rights of Indigenous Peoples Act* affirms the application of the Declaration to the laws of British Columbia.

AND WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples Act* affirms the application of the Declaration to the laws of Canada.

AND WHEREAS as an aspect of our inherent right of self-government and as an incident of SȾÁUTW̱ First Nation's right to carry on our fisheries as formerly, affirmed in the *Saanichton Marina* case, SȾÁUTW̱ First Nation has the jurisdiction to manage the marine habitat including Marine Use Operations in SȾÁUTW̱ Territory;

AND WHEREAS SȾÁUTW̱ First Nation has jurisdiction and authority over Tsawout lands, waters, resources and interests through our unextinguished Aboriginal title to SȾÁUTW̱ Territory which is reinforced pursuant to the *Tsawout First Nation Land Code,* which came into force and effect on May 29, 2007 (the "Land Code");

AND WHEREAS Section 6 of the Land Code allows the SȾÁUTW̱ First Nation the authority to enact rules and procedures, to make policies ancillary to any laws with respect to the management of SȾÁUTW̱ Territory;

AND WHEREAS Section 18.10 of the *Framework Agreement on First Nation Land Management* affirms SȾÁUTW̱ First Nation's power to make laws in accordance with its Land Code, respecting the development, conservation, protection, management, use and possession of SȾÁUTW̱ land and interests, land rights and licences in relation to that land;

NOW THEREFORE the Council of Tsawout First Nation in open meeting assembled, enacts as follows, the SȾÁUTW̱ First Nation *Marine Use Law* No. 2023-01.

1.0 TITLE

1.1 This Law may be cited as the SȾÁUTW̱ First Nation *Marine Use Law.*

2.0 DEFINITIONS

2.1 In this Law the following definitions apply:

"Applicant" means a Person applying for a Licence under this Law, including a renewal of a Licence;

"Application" means a completed written request on the prescribed form and the appropriate fees paid requesting the issuance, amendment or renewal of a Licence under this Law;

"Community Impact Assessment Report" means a report prepared in compliance with the Tsawout First Nation Community Impact Assessment Policy No. 01-2009, at the direction of Council, to support an Application under this Law;

"Council" means the Chief and Council of SȾÁUTW First Nation;

"Douglas Treaty" means the North Saanich Treaty of February 1852;

"Law" means this SȾÁUTW First Nation *Marine Use Law*;

"Licence" means a licence to engage in Marine Use Operations, issued pursuant to this Law;

"Licencee" means a Person who has been issued a Licence pursuant to this Law;

"Marine Use Operations" means the carrying on of a commercial or industrial undertaking of any kind or nature for the purpose of gain or profit, within the marine and coastal areas of SȾÁUTW Territory, but does not include any activities carried on by SȾÁUTW First Nation and its members or WSÁNEĆ members exercising Aboriginal and Treaty rights, protected by section 35 of the *Constitution Act, 1982*;

"Marine Use Plan" means a plan to support an Application under this Law, as revised from time to time in accordance with the terms of the Licence, describing the activities that are proposed relating to the Marine Use Operations, the size of the site, the proposed use of the site and any other information required by Council, prepared by the Licencee in a form approved by Council, signed and dated by both the Licencee and Council and held on file by Tsawout First Nation;

"Offence" means an offence under this Law;

"Person" means any natural person, corporation, partnership, trust, unincorporated organization, association, limited liability company, Band or other governmental authority, or other entity to whom the context can apply according to this Law;

"*Saanichton Marina* case" means *Saanichton Marina Ltd. v. Claxton*, [1989] 5 W.W.R. 82 (B.C.C.A.);

"SȾÁUTW" or "Tsawout" means SȾÁUTW First Nation as defined in the Land Code; and

"SȾÁUTW Territory" means that portion of the traditional marine territory recognized and described in WSÁNEĆ oral history and consistently accessed for food, social, ceremonial and economic purposes as shown on the map attached to this Law as Schedule "A".

3.0 AUTHORITY AND PURPOSE

3.1 The authority of STÁUTW First Nation to govern activities within, on and in respect of STÁUTW Territory and resources flows from our Douglas Treaty rights and inherent right of self-government.

3.2 The purpose of this Law is to set out the principles and legislative and administrative structures through which STÁUTW First Nation will exercise our authority over Marine Use Operations within STÁUTW Territory.

4.0 LICENCING REQUIREMENTS

4.1 No Person shall carry on Marine Use Operations, within or on STÁUTW Territory without a valid Licence issued pursuant to this Law.

4.2 A Licence must set out the following information:

4.2.1 the name and contact information of the holder of the Licence;

4.2.2 the Licence number;

4.2.3 the civic address or legal land description of the site where the Marine Use Operation is authorized and, if applicable, each building within the site;

4.2.4 the authorized activity at the site and, if applicable, the authorized activity that may be conducted at each building within the site;

4.2.5 any conditions that Council considers appropriate, pursuant to Section 5.4.3;

4.2.6 the effective date of the Licence; and

4.2.7 the date of expiry of the Licence.

4.3 Every Licence issued pursuant to this Law shall authorize the Licencee to carry on the Marine Use Operations and activities stipulated in the Licence in a lawful manner for the period, within the times, and at the premises specified in the Licence, subject to the terms and conditions specified on the Licence.

4.4 A Licence is valid for a term of up to five (5) years from the date of issuance specified on the Licence.

4.5 The Licence fees and Application fees set out in Schedule "B" are hereby imposed and must be paid to STÁUTW First Nation by every Applicant for a Licence. Council may, from time to time, amend the amount of the Licence fees and Application fees.

4.6 No Licence fee paid pursuant to this Law will be refunded.

4.7 Each Licencee wishing to continue Marine Use Operations must submit an Application to renew their Licence before it expires.

4.8 The Licencee must promptly notify Council in writing of any changes to their Licence information listed under s. 4.2 and may be required by Council to submit an Application to amend the Licence accordingly.

4.9 A Licence is not transferable from one Person to another Person or from one Person's business to another Person's business.

4.10 It is the responsibility of the Licencee to be aware of all applicable laws and the limits of the Licence, and to obtain proper authorization.

5.0 LICENCE APPLICATION PROCESS

5.1 An Application must be filed with Council in the form and manner prescribed by Council and must set out the information that Council, in its sole discretion, deems necessary to review and evaluate the Application. This information may include, but is not limited to, the following:

5.1.1 the Applicant information set out in Section 4.2;

5.1.2 financial and background information related to the Applicant;

5.1.3 confirmation that all necessary federal fisheries authorizations have been obtained;

5.1.4 a Marine Use Plan; and

5.1.5 a Community Impact Assessment Report (Council will identify the information required in accordance with the Tsawout First Nation Community Impact Assessment Policy No. 01-2009).

5.2 Council may refuse to consider an Application if any information required under Section 5.1 is not provided.

5.3 All Applications must be accompanied by the prescribed Application fee as set out in Schedule "B".

5.4 Council will, within a reasonable period of time, review the Application along with all relevant information and documentation as soon as practicable after receiving the prescribed fee and a complete Application under Section 5.1 and may:

5.4.1 approve the Application;

5.4.2 reject the Application; or

5.4.3 approve the Application, subject to any terms or conditions Council considers appropriate.

5.5 Council may refuse to approve an Application to issue, renew or amend a Licence if:

5.5.1 the issuance, the renewal or the amendment is likely to create a risk to the natural environment, community health, or safety that is not consistent with

SȾÁUTW̱ law, including but not limited to the Tsawout First Nation Community Impact Assessment Policy No. 01-2009;

5.5.2 there are reasonable grounds to believe that false or misleading information or false or falsified documents were submitted in, or in support of, the Application;

5.5.3 Council is of the opinion that it is in the public interest to do so; or

5.5.4 any other reasonable grounds exist, in the sole discretion of Council.

5.6 If Council approves the Application, Council shall send notice of approval to the Applicant. Upon receipt of the prescribed Licence fee as set out in Schedule "B", Council shall issue a Licence to the Applicant.

5.7 If Council refuses an Application, Council must send written notice of the refusal to the Applicant with reasons for such refusal.

6.0 SUSPENSION AND REVOCATION OF A LICENCE

6.1 Council may suspend or revoke a Licence if it determines that a Licencee or the Licencee's business has contravened any provision of this Law or other SȾÁUTW̱ First Nation laws, federal laws, provincial laws, or applicable permits, guidelines, orders, consents, or other directions, or if in Council's opinion there are just and reasonable grounds to suspend or revoke the Licence.

6.2 If Council suspends, restores, or revokes a Licence, Council must send written notice to the Licencee, with reasons for such suspension, restoration, or revocation.

6.3 A refusal of an Application does not preclude submission of a new Application for a Licence by the Person subject to the refusal or revocation.

7.0 PENALTIES AND ENFORCEMENT

7.1 Any Person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an Offence under this Law and is liable to the penalties imposed by this Law or any other SȾÁUTW̱ law.

7.2 Each day a violation of this Law continues will be deemed to be a separate Offence for which a fine or imprisonment may be imposed.

7.3 Any Person who is guilty of an Offence under this Law is liable, on summary conviction, to a fine of not more than One Thousand Dollars ($1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.

7.4 Nothing in this Law precludes SȾÁUTW̱ from pursuing any other enforcement action or remedy provided for in any other SȾÁUTW̱ law, federal or provincial statute or the common law.

8.0 APPLICATION OF LAW

8.1 Nothing in this Law relieves a Person from complying with any applicable law, regulation, by-law, or any requirements of any lawful permit, guideline, order, consent, or other direction.

8.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.

8.3 The headings given to the sections in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

9.0 COMING INTO FORCE

9.1 This Law replaces and supersedes *SȾÁUTW̱ First Nation Marine Use Law* No. 2022-01.

9.2 This Law shall come into force and effect on the date that it is enacted.

THIS LAW IS HEREBY ENACTED by Council at a duly convened meeting held on the 29th day of November 2023 at Saanichton, British Columbia.

A quorum consists of **five (5)** Council Members:

Chief Abraham Pelkey

Councillor John Etzel

Councillor Samantha Etzel

Councillor John Wilson

Councillor George Horne

Councillor Stanley Sam

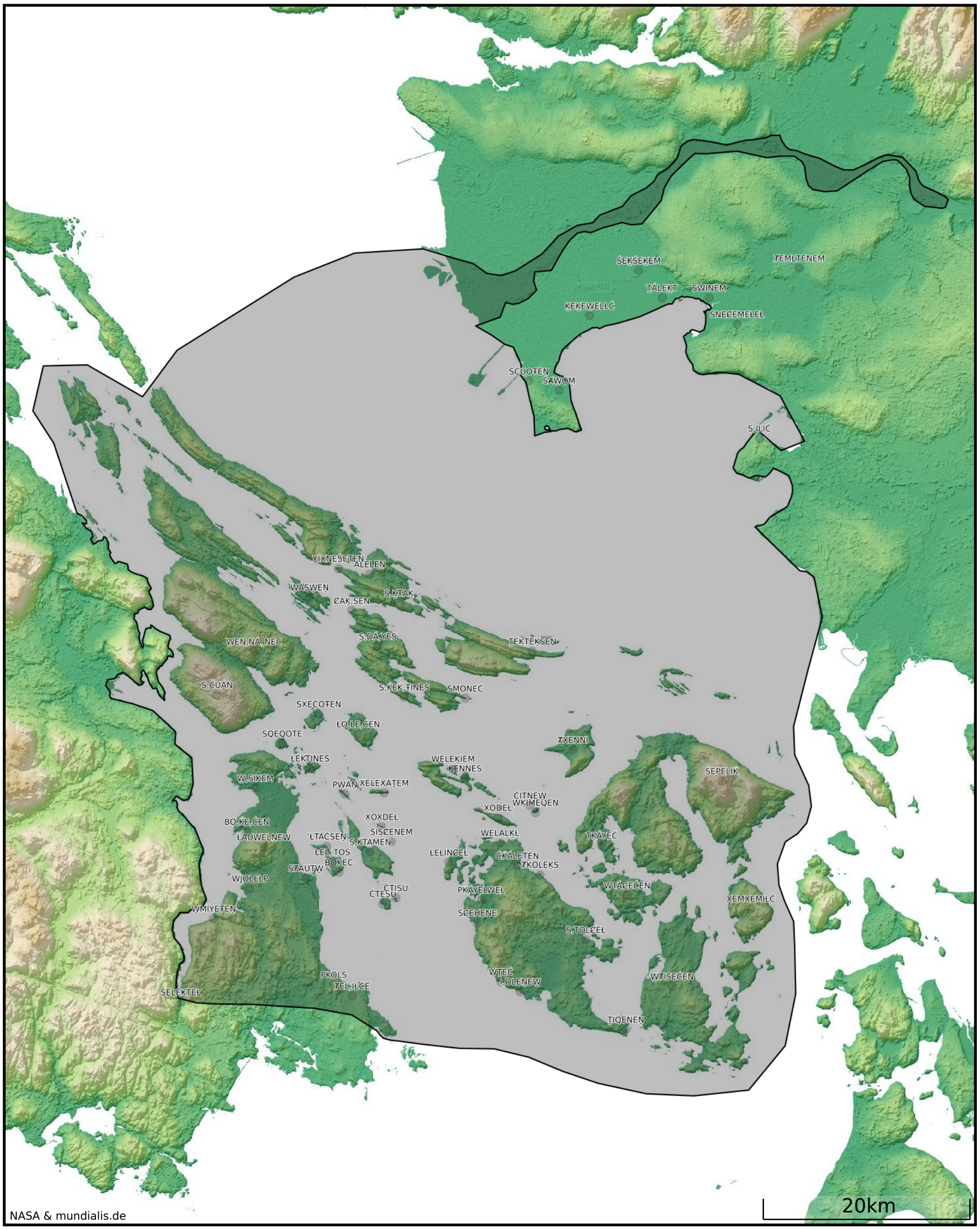
Councillor Blake Joseph

Councillor Harvey Underwood

Councillor Donald Williams

Tsawout First Nation

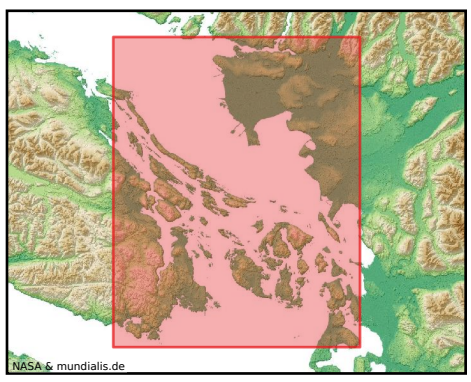
STÁUTW Marine Territory



Legend

- Place Names
- Marine Use Boundary

Nandhra, Neesha
2022-06-06 - EPSG:3857



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SCHEDULE B – LICENCE AND APPLICATION FEES

Application Fees

1. A person applying under the SȾÁUTW̱ First Nation *Marine Use Law* must pay to SȾÁUTW̱ for the purposes itemized in Column 1 of the Schedule to this section the Application fee set opposite that item in Column 2.

Column 1 ***Purpose***	**Column 2** ***Application Fee***
Transportation — excluding ferry terminals, airports, and marinas	$500
Ferry Terminals	$500
Airports	$500
Utilities	$500
Marinas	$250
Commercial Recreation — mechanized uses	$250
Commercial Recreation — non-mechanized uses	$100
Commercial Fishery — individuals	$50
Commercial Fishery — excluding individuals	$150
Aquaculture	$150
Marine Use Operations conducted by non-profit, public interest, or academic institutions	$150
Other	$50 for each hour of staff time with $25 minimum fee

Licence Fees

2. A person must pay to STÁUTW for the purposes itemized in Column 1 of the Schedule to this section the annual Licence fee set opposite that item in Column 2.

Column 1 ***Purpose***	**Column 2** ***Licence Fee***
Transportation — excluding ferry terminals and airports	$25,000
Ferry Terminals	$25,000
Airports	$25,000
Utilities	$25,000
Marinas	$2000
Commercial Fishery — individuals	$50 base fee, plus additional fees based on species and quota
Commercial Fishery — excluding individuals	$150 base fee, plus additional fees based on species and quota
Aquaculture	$150 base fee, plus additional fees based on species and quota
Marine Use Operations conducted by non-profit, public interest, or academic institutions	$50
Other	$50 minimum fee

Fee Waiver

3. Council may, on application by an Applicant, waive or reduce any application or licence fee.