

SUBJECT: Submerged Land Policy

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1.0 Purpose

Purpose The purpose of this policy is to provide guidance and direction to Department of Natural Resources (DNR) staff with respect to the administration of submerged Crown land use applications involving new or previously authorized structures, works or activities.

2.0 Background

2.1 Submerged Crown Lands The Department of Natural Resources (DNR) is responsible for the management of approximately 2.1 million hectares of tidally-influenced submerged lands, as well as some inland, non-tidal, rivers and lakes. For tidal waters, submerged lands located seaward of the ordinary high water mark (OHWM) are normally Provincial Crown lands under the administration and control of DNR, except in limited locations where they have been granted, or otherwise disposed of, by the Department. For inland, non-tidal waters, the ownership boundary between Crown and freehold land is typically the normal high water mark (NHWM) for those cases where the submerged lands have been specifically reserved from the upland property grants. In cases where the submerged lands have not been specifically reserved, lands below the NHWM to the center thread of that water body belong to the adjacent upland owner. In addition to the underwater lands, submerged Crown lands ownership also includes the waters or water column located above them.

The Crown Lands Branch of DNR handles numerous land use applications per year that involve submerged Crown lands. These applications consist of various proposed developments, such as erosion control structures, breakwaters, jetties, wharves, docks, marinas, intake/outfall pipes, ocean dumping, dredging, submerged logging, etc. Given the high public demand for submerged Crown lands, it is important that this resource be carefully managed in the best interest, and for the benefit, of the citizens of New Brunswick.

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2.0 Background, Continued

2.1 Submerged Crown Lands (continued)

Leases, Licences or Easements are the most common types of tenure that are issued by DNR for approved applications. Interim policies or practices have been used by the Department to help administer these land use applications and manage developments on submerged Crown lands with some degree of consistency. However, no formal departmental policy had been developed. The need for a departmental Submerged Land Policy has become more apparent in recent years as the Department has become involved in more issues. Most of these issues are the direct result of increased and somewhat uncontrolled development.

Typical examples would include the following:

- a) Landowners construct new dwellings too close to the water and consequently have to undertake erosion control work or infilling below the OHWM or NHWM to protect their investment;
- b) Landowners in areas with long development histories wish to re-construct existing works that are now below the OHWM or NHWM because of natural erosion and/or sea-level rise;
- c) Landowners build and rebuild structures or works varying distances below the OHWM or NHWM, which results in a “jagged shoreline” and causes a variety of impacts; and
- d) Landowners try to reclaim land lost to natural gradual erosion and/or sea-level rise.

With respect to coastal developments, the Department of Environment (DENV) is presently trying to implement the *Provincial Coastal Areas Protection Policy*, which focuses on developments above the ordinary low water mark OLWM in coastal areas. No such policy exists for marine waters below the OLWM or non-tidal waters. Consequently, most decisions and cases involving these areas will continue to rest with DNR, which further supports the need for a departmental Submerged Land Policy.

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2.0 Background, Continued

2.2 Importance of Managing Developments or Works

Aquatic structures or works, such as wharves, docks, breakwaters, and erosion control structures, which are common human-made features found on submerged lands, can normally be grouped into three categories:

- a) Those that are based on “fill” of some type, including rip-rap;
- b) Those that are supported or anchored by “piles or posts”; and
- c) Those that “float” on the water.

As a general rule, fill-based structures have a greater potential to impact the aquatic environment because of their larger footprint, which results in more benthic habitat being covered and destroyed. Fill-based structures also have a greater potential to interfere with shore or riverine currents, sediment patterns and wave action that can cause a variety of other negative impacts, including erosion. The impacts associated with pile or post-based structures are normally much less significant than fill-based structures and those related to floating structures are typically even less significant.

The management of developments or works on submerged Crown lands is important. Any structures or works on submerged Crown lands represent a potential liability for the Department if they are not authorized, since they have the potential to adversely and/or cumulatively impact:

- a) Physical aquatic processes, such as long shore and littoral drift in tidal waters, or stream flow and sediment flow in non-tidal waters, which can result in changes in sediment deposition, accretion or erosion;
- b) Aquatic and shore/riverine species, such as fish, shellfish, and birds;
- c) Aquatic and shore/riverine habitats, such as beach, benthic (bottom) and pelagic (water column) environments;
- d) Public access along the Crown foreshore;
- e) Public safety; and
- f) Navigational safety and access.

Disruption of aquatic lands or upland often results from poor planning and project design. For example, people often build an unnecessarily large dock that shades out the aquatic plants, build too close to the water or construct other structures, such as groins or erosion control structures, that rob downdraft areas or properties of sediment. Such activities often alter the erosion, transport, and deposition patterns along the water body, and sometimes lead to even bigger physical and biological changes over a much larger stretch of the water body.

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2.0 Background, Continued

2.2 Importance of Managing Developments or Works (continued)

It is recognized that some aquatic structures or works are important and appropriate in enabling people and communities to provide for their social, economic, and cultural well-being. Further, some structures or works must be located on submerged Crown lands to be functional. However, there are some structures that do not have a functional need to be located below the OHWM or NHWM. Such structures or works are difficult to justify from a public interest point of view and should not be authorized on submerged Crown lands under normal circumstances.

3.0 Scope

Scope

This policy applies to all development activities and other specific uses involving submerged lands under the administration and control of the Minister of Natural Resources, except those within a Protected Natural Area. It does not deal with requests for land acquisitions and disposals or unauthorized occupations.

4.0 Authority

Authority

- Sections 23, 24, 25 and 26, *Crown Lands and Forests Act*.
 - Regulation 89-32, *Leasing Regulation - Crown Lands and Forests Act*.
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5.0 Policy Statements

Policy Statements

It is the policy of the Department that:

- a) Structures, works, or activities, which are water-dependent and meet certain requirements, may be permitted on submerged Crown lands with prior authorization from the Department;
- b) Structures, works, or activities, which are temporary or seasonal in nature and meet certain requirements, are permitted on submerged Crown lands without prior authorization from the Department;
- c) Structures or works that are non-water-dependent, as well as groins, infilling, and causeways where a bridge is a technically feasible alternative, are not permitted on submerged Crown lands, unless certain exceptions apply; and
- d) Structures that can be located on a proponent's freehold land will not be authorized on submerged Crown land.

Table 1 on the next page summarizes the authorization requirements of this policy for structures, works and activities on submerged Crown lands.

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Table 1

Summary of Authorization Requirements for Structures, Works or Activities		
Structures, Works or Activities	Authorization Required	Policy Section(s)
Groins	Prohibited, except if meet certain criteria (Lease)	8.1, 11.0
Infilling	Prohibited, except if meet certain criteria (Lease)	8.1, 11.0
Causeways	Prohibited, except if meet certain criteria (Lease)	8.1, 11.0
Erosion Control	Prohibited, except if meet certain criteria (Lease)	8.1, 10.3, 11.0
Non-Water Dependent	Prohibited, except if meet certain criteria (Lease)	8.1, 11.0
Harvesting, Collection or Raking of Organic Matter	Prohibited, except if meet certain criteria (Licence of Occupation)	8.2, 11.0
Floating Docks	No Authorization Required, if meet certain criteria (otherwise Lease).	9.1, 10.1
Moorings	No Authorization Required, if meet certain criteria (otherwise Lease).	9.1, 10.1
Swim Platforms	No Authorization Required, if meet certain criteria (otherwise Lease).	9.1, 10.1
Beach Clean-Up	No Authorization Required, if meet certain criteria (otherwise Licence).	9.2, 10.1
Carcasses	(Region/District Responsibility)	9.3
Other Temporary Occupations or Activities	Licence of Occupation, if potential impacts (e.g., equipment or machinery)	9.4, 10.1
Wharves	Lease	10.1
Permanent Docks	Lease	10.1
Boat Launching Ramps	Lease	10.1
Breakwaters	Lease	10.1
Marinas	Lease	10.1
Piers	Lease	10.1
Jetties	Lease	10.1
Intake and Outfall Pipes	Licence of Occupation	10.2, 10.1
Dredging and Spoil Disposal	Licence of Occupation or Quarry Permit	10.4, 10.1
Public Utility Pipelines/Cables	Easement	10.5, 10.1
Submerged Logging	Licence of Occupation	10.6

6.0 Policy Objectives

Policy Objectives

The objectives of this policy are to:

- a) Manage submerged Crown lands appropriately for the environmental, social and economic values that they hold;
 - b) Manage Crown lands to protect the ecology of the aquatic and upland environments;
 - c) Discourage non water-dependent uses, as opposed to water-dependent uses, on submerged Crown lands;
 - d) Make submerged Crown lands available in a fair and equitable manner for public and commercial use and development to optimize the long-term benefits derived by the citizens of New Brunswick;
 - e) Ensure that submerged Crown lands are sustainably managed on behalf of the citizens of the Province and that fair compensation is received for their use;
 - f) Manage submerged Crown lands to maintain adequate and appropriate public access on them so that it is possible for the public to enjoy a range of recreational opportunities;
 - g) Manage submerged Crown lands in accordance with the Crown Land Management Principles; and
 - h) Manage submerged Crown lands in accordance with the *Provincial Coastal Areas Protection Policy* through the coordination of review processes with the Department of Environment.
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7.0 Management Guidelines

Management Guidelines

In managing development or works on submerged Crown lands, staff of the Department shall, wherever possible:

- a) Ensure that floating structures or pile/post/crib-based structures that allow water circulation under them are preferred over fill-based or solid structures or works that do not;
- b) Ensure that building materials with nooks and crannies, such as rock, are preferred over solid flat materials that do not dissipate wave energy; and
- c) Ensure that the size/footprint of any authorized developments or works on submerged Crown lands is limited to the minimum area that is required to accommodate the development in order to minimize potential negative impacts.

8.0 Prohibited Structures, Works or Activities

8.1 Prohibited Structures or Works

The following structures or works are prohibited on submerged Crown lands and may only be considered for authorization via a Lease if they meet the criteria of *Section 11.0* of this policy:

- a) Groins;
 - b) Infilling;
 - c) Causeways, where a bridge is a technically feasible alternative;
 - d) Erosion control structures or works;
 - e) Any non-water-dependent structures or works; and
 - f) Any structures or works that are non-compliant with this policy.
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8.2 Harvesting, Collection or Beach Raking of Organic Matter

Harvesting, collection, beach raking or other activities involving the large-scale removal of organic matter, including beach wrack and seaweed, are not permitted on submerged Crown lands unless:

- a) They meet the criteria of *Section 11.0* of this policy, in which case a Licence of Occupation is required as per *Section 9.4*; or
 - b) The harvesting is approved and monitored by the Department of Agriculture, Fisheries and Aquaculture.
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9.0 Temporary or Seasonal Structures, Works or Activities

9.1 Floating Docks, Moorings, Swim Platforms and Other Structures

9.1.1 Floating docks, moorings, swim platforms and other structures, which are temporary or seasonal in nature, do not require authorization or tenure from the Department to occupy submerged Crown lands provided they are:

- a) Used exclusively for personal recreational purposes (non-commercial);
- b) Limited to a maximum of three structures or works per waterfront property and each structure or work is of a different type;
- c) Accommodating a maximum of two boats for floating docks cases;
- d) Not interfering with existing legal uses or tenure issued by the Department;
- e) Occupying submerged Crown lands on a seasonal basis and are placed there no earlier than April and removed by the end of November without the use of heavy equipment on Crown land.
- f) Not permanently affixed to submerged Crown lands or associated with any permanent works (exception: mooring blocks), components, features or dredging activities on submerged Crown lands;
- g) In compliance with conditions c, d, f, and i of *Section 10.1*; and
- h) Reasonable in size for the intended use:
 - i. Less than 100m² in area for floating docks, which may not extend more than 15m below or seaward of the OHWM or NHWM;
 - ii. Less than 36m² in area for swim platforms; and
 - iii. Less than 4m² in area for moorings (e.g., blocks).

9.1.2 Proponents are responsible for ensuring that their seasonal structures or works do not interfere with the rights of any upland or neighbouring riparian property owners.

9.1.3 Floating docks, moorings, swim platforms, and other structures, which meet the above criteria and do not require authorization, are subject to displacement, relocation, or removal at the Department's request, if deemed in the public interest to do so or if required to accommodate the use of any structures or works authorized by a Lease, Licence of Occupation, or Easement.

9.1.4 Floating docks, moorings, swim platforms and other temporary or seasonal structures, which do not meet the criteria in *Section 9.1.1*, may be authorized on submerged Crown Lands via a Lease subject to the structures or works meeting the conditions in *Section 10.1*. Similarly, proponents with structures that meet the criteria in *Section 9.1.1* may also apply for a Lease in order to gain exclusive use of the subject area.

9.0 Temporary or Seasonal Structures, Works or Activities, Continued

9.2 Beach Clean-Up Activities **9.2.1** Clean-up activities involving the removal of human waste, debris, or garbage, as well as abandoned gear, vessels or equipment, are permitted on submerged Crown lands, without prior authorization from the Department, subject to the following conditions:

- a) No heavy equipment is used;
- b) No dredging, digging or excavation is required; and
- c) Any necessary municipal, provincial or federal approvals are obtained.

9.2.2 Clean-up activities, which do not meet the above requirements, shall require prior authorization from the Department via a Licence of Occupation subject to compliance with conditions c, d, e, f, and k of *Section 10.1*.

9.3 Carcass Removal and Disposal The removal and disposal of marine and other animal carcasses from submerged Crown lands is permitted. The Regional and District Offices are responsible for the removal of large carcasses.

9.4 Other Temporary Occupations or Activities Other temporary occupations or activities on submerged Crown lands, which do not involve a structure, but may potentially impact the aquatic environment (e.g., equipment or machinery), may be authorized on submerged Crown lands via a Licence of Occupation. Authorization is subject to the structures or works complying with conditions c, d, e, f, h, and k of *Section 10.1*.

10.0 Permanent Structures or Works

10.1 Access Structures or Works

Wharves, docks, boat launching ramps, breakwaters, marinas, piers, jetties, and other access structures or works, which are permanent in nature and occupy both the submerged land and water column, may be authorized on submerged Crown lands via a Lease, provided that the structures or works meet the following criteria:

- a) Are designed to allow for the free littoral flow of water and drift material (e.g., built on poles, pipes, piles or cribs) if extending more than 5m below the OHWM or NHWM. For designs not allowing for free littoral flow, and extending more than 5m below the OHWM or NHWM, applicants are required to provide a report from a professional aquatic consultant or engineer indicating that the proposed designs will not cause adverse impacts to the environment and neighbouring properties;
- b) Are of sound aquatic engineering design, structurally stable, and functional, proof of which may be requested by, and at the discretion of, the Department from applicants in the form of a professional aquatic consultant's or engineer's report;
- c) Are not hazardous to the shore/riverine and aquatic environments, including species, habitats and physical processes and all materials, machinery or equipment are free from grease, oil, leaching toxins or other contaminants;
- d) Are in compliance with all relevant municipal, provincial and federal legislation;
- e) Are located adjacent to land owned by the applicant or consent (e.g., a written agreement) is obtained from the adjacent upland owner;
- f) Are not a threat to public safety, as determined by the Department;
- g) Are maintained in an aesthetically pleasing manner and in good repair by the proponent during the term of the tenure, including the clean-up of any component materials from the beach or other lands, below the OHWM or NHWM, should the structure or work be damaged or destroyed;
- h) Are constructed or erected with appropriate measures in place, as requested by relevant agencies, to ensure that there is no discharge of silt, debris or other harmful materials into the aquatic environment (e.g., emergency spill kit, hydrocarbon pads, silt curtain, remove construction debris, etc);
- i) Are not obstructing public access on or use of, the Crown foreshore; or alternate, safe access is provided by the proponent over or around the structure at all times.

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10.0 Permanent Structures or Works, Continued

10.1 Access Structures or Works (continued)

- j) Are not constructed of materials obtained from the beach or water body/bed, including rocks, and any backfill material is obtained from an upland source; and
 - k) Are in compliance with any other terms and conditions deemed appropriate by the Department, in consultation with other agencies.
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10.2 Intake and Outfall Pipes

Intake and outfall pipes may be authorized on submerged Crown lands via a Licence of Occupation for a term of up to 20 years, provided they comply with conditions a) through k) of *Section 10.1*.

10.3 Erosion Control Structures or Works

Erosion control structures or works, such as rip-rap, bulkheads, revetments, gabion baskets and seawalls are not permitted on submerged Crown lands below the OHWM or NHWM, except if deemed necessary by the Department per *Section 11.0* of this policy. In such cases, erosion control structures or works may be authorized via a Lease per the normal land use application and review process/requirements and subject to the following conditions in addition to those outlined in *Section 10.1*:

- a) The occupation of submerged Crown lands shall be limited to the minimum distance and area required below the OHWM or NHWM to satisfy the applicable criteria of *Section 11.0*;
 - b) No erosion control structure shall be located further seaward or water ward than any neighbouring erosion control structure located within 1 km of the site along the same water body unless a report from a professional aquatic consultant or engineer can be provided by the proponent indicating that the proposed design will not cause adverse impacts to the environment and neighbouring properties;
 - c) Sediment control measures must be in place prior to any backfilling;
 - d) New structures replacing existing ones may not extend further on Crown lands than the ones they are replacing;
 - e) Erosion control structures must be structurally tight so as to prevent seepage of backfill materials through the structure, proof of which may be requested by the Department from applicants in the form of a professional aquatic consultant's or engineer's report;
 - f) No excavation is permitted except that which is required for the construction of the erosion control structure provided such excavation does not occur on Crown lands outside of the approved area; and
 - g) Other terms and conditions deemed appropriate by the Department, in consultation with other agencies, may also be applied.
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10.0 Permanent Structures or Works, Continued

10.4 Dredging and Dredge Spoil Disposal

10.4.1 Dredging and/or dredge spoil disposal activities may be authorized on submerged Crown lands via a Licence of Occupation subject to the following conditions:

- a) The application provides a clear public or collective benefit, as determined by the Department, such as for cases involving small craft harbours or DNR authorized marinas, wharves, boat ramps, etc.;
- b) The term of the Licence of Occupation shall match the work schedule of the Site Development Plan, but shall not exceed ten years;
- c) One Licence of Occupation may be issued for dredge and disposal activities involving different sites if the sites are part of the same project and either physically linked to one another or located within 100m of each other; and
- d) The activities are in compliance with all relevant municipal, provincial and federal legislation; and
- e) The activities are in compliance with any other terms and conditions deemed appropriate by the Department, in consultation with other agencies.

10.4.2 Dredging and/or dredge spoil disposal activities, which do not satisfy 10.4.1 a), such as cases involving dredging for private docks or boat ramps, may be authorized on submerged Crown lands via a Licence of Occupation subject to the following conditions:

- a) The applicant must provide a report from a professional aquatic consultant or engineer indicating that the proposed work will not cause adverse impacts to the environment; and
- b) Compliance with conditions b) through e) of *Section 10.4.1*.

10.4.3 For dredging activities within the shore area designated under the *Quarriable Substances Act* (e.g., 300m above and below the OHWM), a License of Occupation is not required, provided a Quarry Permit is issued.

10.5 Public Utilities

Public utilities, including pipelines, telecommunications cables, and power cables, may be authorized on submerged Crown lands. In such cases, approval is via an Easement subject to compliance with conditions c) through k) of *Section 10.1*.

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10.0 Permanent Structures or Works, Continued

10.6 Submerged Logging

- 10.6.1** The retrieval of logs from submerged Crown lands may be permitted via a 1-year Licence of Occupation and subject to the following requirements:
- a) Applicants are limited to a maximum of five sites totalling no greater than 200 ha with no one site exceeding 60 ha in area;
 - b) No submerged logging activities are permitted less than 30 metres from shore and in less than 3 metres of water;
 - c) Successful applicants are required to buoy their work areas using GPS, prior to beginning work, and subject to consultation with the Coast Guard;
 - d) The Department reserves the right to invoke additional conditions at any time, if required, after a Licence has been issued;
 - e) The Licensee will permit any Provincial and Federal agencies to monitor the operations at all times during the term of the Licence;
 - f) The Licensee must comply with all federal, provincial and municipal legislation including, but not restricted to, the following: *Crown Lands and Forests Act, Canada Fisheries Act, Occupational Health and Safety Act, Canada Shipping Act, Clean Water Act, Clean Environment Act*, and any Local, Regional and/or National Diving Operations Standards;
 - g) The Licensee must submit environmental reports to the Department of Environment in accordance with the *Environmental Report Form for Submerged Logging Operations*;
 - h) At the request of the Coast Guard, Licensees must adhere to the *Collision Regulations* under the *Canada Shipping Act*, paying particular attention to anchorage and proper vessel markings (e.g., lights, etc.). Extreme caution and courtesy must be exercised relative to other vessels and navigation aids;
 - i) The Licensee is responsible for landing, storing, transporting and disposing of retrieved logs;
 - j) The Licensee is responsible for paying any required royalty rates set by Regulation 86-160 under the *Crown Lands and Forests Act* for all submerged logs retrieved from Crown lands;
 - k) The Licensee must disclose the value or price received for the logs, the names and addresses of the buyers or processors, as well as the volume of logs retrieved, sold and shipped;
 - l) No submerged logs may be exported outside of New Brunswick; and
 - m) The authorization is not transferable.

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10.0 Permanent Structures or Works, Continued

10.6 Submerged Logging (continued)

10.6.2 All License of Occupation Applications for submerged logging must include the following information:

- a) A description of the proximity of the proposed site(s) to navigational channels and navigation beacons;
 - b) A description of the location and ownership of proposed landing sites;
 - c) A description of the location and ownership of proposed log storage sites;
 - d) An underwater video site survey (2 copies) utilizing federal "Department of Fisheries & Oceans Underwater Video Site Survey Guidelines". Side-scan sonar information must be substituted for the video where conditions prevent filming;
 - e) A description of the substrate composition of site;
 - f) A description of the fish species in the area and their use of the proposed site for spawning, rearing or migration;
 - g) A description of the historical use of the area by industrial operations, to determine possible sediment contamination;
 - h) A description of any existing activities within the proposed site, as well as a general description of the adjacent upland properties (e.g., residential, seasonal, commercial, or industrial dwellings/uses);
 - i) A description of the structures in the vicinity of the site including water intakes, dams, moorings, wharves, etc.;
 - j) A description of the consultation process with other stakeholders (commercial, recreational, aboriginal, residential) and provide documentation;
 - k) A description of the water depth range across the entire site and the distance from shore; and
 - l) The name and address of initial processors or anticipated buyers of the logs.
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11.0 Exceptions

11.0 Exceptions **11.1** Prohibited structures, works or activities identified in *Section 8.0*, as well as those that do not meet the requirements of any other preceding Sections of this policy, may be considered for authorization provided that they meet at least one of the following criteria:

- a) Are required to prevent imminent, significant danger to property;
- b) Are required to protect landowners' or public health/safety/welfare and there is no feasible and prudent alternative;
- c) Are required to protect public assets or are serving a clear public interest or benefit;
- d) Are required to protect a property from erosion or other negative impacts and occupation of submerged Crown lands cannot be avoided because of site characteristics or a lack of feasible design alternatives.

11.2 Any structures or works authorized under *Section 11.1* must meet the following conditions:

- a) The occupation of submerged Crown lands is limited to the minimum distance and area required below the OHWM or NHWM that is necessary to satisfy the applicable above-noted criteria;
- b) All other applicable municipal, provincial and federal legislation must be complied with; and
- c) The tenure-related conditions specified in *Sections 9.0 and 10.0* are satisfied, where reasonable.

12.0 Other Tenure, Authorizations or Actions

**Other Tenure,
Authorizations
or Actions**

Other forms of tenure, authorizations or actions, such as agreements or disposals, may be considered and used by the Department for submerged Crown land cases involving special circumstances or particular problems, as determined by the Department. Examples may include disposals to municipalities for areas with long development histories and particular submerged Crown lands management problems.

13.0 Maintenance or Repair of Authorized Structures or Works

13.0 Maintenance or Repair

13.1 Maintenance or repair of any authorized structures or works on submerged Crown lands may take place without further authorization from the Department provided:

- a) The size, design, or dimensions of the original structure or work, as well as the footprint of submerged Crown lands being occupied, are not changed;
- b) The work takes place within the authorized area and does not require occupation of submerged Crown land, outside of the authorized area, with heavy equipment;
- c) The work is not hazardous to the shore/riverine and aquatic environments, including species, habitats and physical processes and all materials, machinery or equipment used in construction are free from grease, oil, leaching toxins or other contaminants;
- d) The work is in compliance with all relevant municipal, provincial and federal legislation;
- e) The work is undertaken with appropriate measures in place, as requested by relevant agencies, to ensure that there is no discharge of silt, debris or other harmful materials into the aquatic environment (e.g., emergency spill kit, hydrocarbon pads, silt curtain, remove construction debris, etc); and
- f) No dredging, digging or excavation is required.

13.2 If the maintenance or repair work results in an increase in size/area or footprint of the submerged Crown lands occupied by the structure or work, an application to amend the existing tenure must be submitted.

13.3 If the maintenance or repair work requires the temporary occupation of submerged Crown lands outside of the existing authorized area, the proponent must apply for a Licence of Occupation and meet the requirements of *Section 9.4* of the policy.

14.0 Pre-Authorization Requirements

14.1 Site Development Plan

14.1.1 Proponents applying for a Lease or Licence of Occupation must submit, along with their applications, a description of the proposed activities in the form of a Site Development Plan.

14.1.2 Site Development Plans must contain the following components:

- a) A project summary description;
- b) A location map and/or aerial photograph showing the boundaries, dimensions and size of the proposed area;
- c) A site plan showing:
 - i. The location of all proposed structures or works, with scale dimensions.
 - ii. The approximate locations of the OHWM and ordinary low water mark for tidal areas or the NHWM for non-tidal areas. .
 - iii. The location of any related upland developments or works.
 - iv. Any future site expansion or development plans.
- d) Construction details for all planned structures or works, including excavations, construction materials, construction equipment/machinery that will be used, spill/pollution/sedimentation prevention measures, etc.;
- e) Timeline of the proposed project, including construction schedules and ongoing or future maintenance plans; and
- f) Rehabilitation plans for any disturbed lands as a result of construction activities and a site rehabilitation plan for implementation upon expiry of the tenure.

14.1.3 Site Development Plans for Licence applications involving submerged logging must also include the following components in addition to those outlined above in *Section 14.1.2*:

- a) Bathymetric map indicating site location and referencing GPS coordinates;
- b) Detailed site plan indicating log densities (e.g., the approximate number and location within the site);
- c) Description of mitigation measures to minimize environmental effects to both water and land;
- d) Plans for disposal of unmerchantable or unmarketable logs; and
- e) Description of methodologies for retrieval of logs from the bottom of the waterway, transport of logs to land, and removal of logs from the water to shore.

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14.0 Pre-Authorization Requirements, Continued

14.1 Site Development Plan (continued)

14.1.4 The Site Development Plan will form part of the Lease, Easement or Licence of Occupation.

14.1.5 Once tenure has been approved and issued, construction of the structures or works must conform to the approved Site Development Plan.

14.1.6 Proponents wishing to modify their authorized development area, or undertake any works not identified in the original Site Development Plan, must submit an updated Site Development Plan for review and obtain new authorization from the Department prior to beginning work.

14.2 Public Notification

14.2.1 Where it appears that an application for a lease, licence of occupation or easement, if approved, may

- a) impinge on riparian rights, including access to property, of nearby owners,
- b) pose a threat to public health or safety,
- c) create a serious nuisance, or
- d) otherwise have serious adverse effects on owners and users of nearby lands,

The Department will require that public consultation take place and may specify how the public consultation will be conducted.

14.2.2 The public consultation will be at the applicant's expense and may include:

- (a) public notifications in a French and English newspaper that serves the area in which the use is proposed. The notification shall:
 - i) describe the proposed use,
 - ii) show the location of the proposed use,
 - iii) indicate to whom and where comments are to be forwarded;
 - iv) indicate that the names of individuals who have concerns with the proposal will be kept confidential; however, DNR may share the concerns that were identified with the applicant, and
 - v) identify a deadline for submitting comments;
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14.0 Pre-Authorization Requirements, Continued

14.2 Public Notification (continued)

- (b) sending a letter to land owners located within 300 m distance of the site on which the use is being proposed. The letter shall:
 - i) describe the proposed use,
 - ii) show the location of the proposed commercial or industrial lease,
 - iii) indicate to whom and where comments are to be forwarded;
 - iv) indicate that the names of individuals who have concerns with the proposal will be kept confidential; however, DNR may share the concerns that were identified with the applicant, and
 - v) identify a deadline for submitting comments; and
 - (c) holding public consultation sessions to assist in making a decision on whether or not to issue authorization.
-

14.2.3 Where legitimate serious concerns, to which there is no apparent resolution, are raised through the public notification process, the Department will reject the application.

Where it appears that there may be a way to resolve the concerns raised, the Department will request the applicant to work with the affected parties to resolve the concerns. Where this involves a dispute among landowners, the Department may further require the applicant to obtain signed releases from the disputing parties freeing the Province from future claims.

Where legitimate serious concerns raised through the public notification process are not resolved within a reasonable length of time, the Department will reject the application.

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14.0 Pre-Authorization Requirements, Continued

14.2 Public Notification (continued)

14.2.4 Public Consultation will not be required for

- a) projects where public consultation is undertaken as part of another approval process such as an EIA or an amendment to a by-law or regulation enacted under the *Community Planning Act*.
- b) tenure renewals or assignments;
- c) the maintenance, repair, or rebuilding of existing authorized structures or works;
- d) submerged logging; and
- e) previously authorized dredge and disposal projects associated with the maintenance of existing navigation channels for small craft harbours, or DNR authorized wharves, docks, marinas, or boat ramps, where the spoil disposal sites remain the same.

14.3 Insurance

14.3.1 Prior to the Department issuing a Licence of Occupation for intake or outfall pipes, or any Lease, applicants must obtain \$2,000,000.00 public liability insurance.

Her Majesty the Queen, in Right of the Province of New Brunswick, must be named as an “additional-insured” in the policy and the policy must be maintained for the term of the authorization or tenure. A copy of the policy and/or a certificate of insurance must be provided to DNR upon request.

14.3.2 The Insurance requirements noted above may also apply to submerged Crown lands applications involving other Licences of Occupation if the proposed uses are deemed by the Department to represent a significant risk.

Continued on next page

14.0 Pre-Authorization Requirements, Continued

14.4 Survey

14.4.1 The applicant is required to provide a survey:

- a) For all new Leases, Licences of Occupation for intake or outfall pipes, and Easements;
- b) Any time there is an addition or a withdrawal of land from a Lease, Licence of Occupation for intake or outfall pipes, or Easement;
- c) For other Licences of Occupation applications, if deemed appropriate by the Department; and
- d) For the renewal of uses requiring a survey if the boundaries:
 - i. Have been clearly changed;
 - ii. Are no longer visible (e.g., buoy locations); or
 - iii. Are unclear.

14.4.2 The applicant shall, at his expense, have a New Brunswick Land Surveyor prepare a coordinated plan of survey or subdivision plan on which coordinates shown were derived from ties to adjusted NB Monuments or HPN Monuments, along with a description of the surveyed area, and submit these to the Department for approval.

14.5 Registration

14.5.1 Before a Lease or Easement is issued, the Department may require the occupant to:

- a) Obtain either an approval or exemption under the *Community Planning Act* for registration of the parcel created by the Lease or Easement; and
- b) Register the Lease or Easement and submit proof of registration within a specified period.

14.5.2 If the Department's land is in the Land Titles System, the applicant will have to register the Lease or Easement in the Land Titles System. Where the applicant desires to enter into an undertaking that requires the transfer of the leased lands from the Land Registry System to the Land Titles System, such as mortgaging a leasehold interest, the applicant is responsible for arranging the transfer and bearing all associated costs.

Continued on next page

14.0 Pre-Authorization Requirements, Continued

14.6 Conformity to EIA Regulation

14.6.1 Any submerged Crown lands applications that correspond to one of the undertakings described in Schedule A of Regulation 87-83, *Environmental Impact Assessment Regulation – Clean Environment Act* must be registered by the applicant with the Minister of Environment to determine whether or not the completion of an environmental impact assessment is required. In such cases, DNR may undertake the evaluation of the applications but will not make a final offer to the applicants until:

- a) The Minister of Environment has determined that the undertaking does not require the completion of an environmental impact assessment, or
- b) The Lieutenant-Governor in Council has given an approval for the undertaking.

14.6.2 In cases where the Lieutenant-Governor in Council does not approve the undertaking, the Department will reject the application.

14.7 Business Plan

For submerged Crown lands applications involving commercial or industrial Leases, the applicants must provide a Business Plan that:

- a) Provides complete financial information on cost estimates and funding requirements for the proposed project; and
 - b) Demonstrates that capital required to develop the site is secured, e.g. letter of credit from a bank.
-

15.0 Right Holder Requirements

15.1 Leasing Regulation

Lessees of submerged Crown lands must abide by all the requirements of Regulation 89-32, *Leasing Regulation – Crown Lands and Forests Act*.

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15.0 Right Holder Requirements, Continued

**15.2
Responsibility
for Access**

The Minister is not responsible for providing or maintaining access to the demised lands.

**15.3 Vacant
Possession and
Site
Rehabilitation**

Where applicable and unless otherwise required by the Minister, right holders shall deliver vacant possession upon termination of their tenure. Also, right holders shall, before the termination of the tenure, rehabilitate the demised lands to such extent as is reasonable under the circumstances and to the satisfaction of the Minister and, where such rehabilitation is not carried out, the Minister may rehabilitate the demised lands at the right holder's expense.

15.4 Indemnity

Right holders shall indemnify the Minister against all claims resulting from the right holder's use or occupation of the demised lands.

**15.5 Use and
Inspection of
Lands**

Right holders shall use the demised lands for the authorized use and purposes only, and maintain them in good repair. Further, the right holder shall permit the Department to inspect the demised lands at reasonable times to ensure that the provisions of the authorization are being complied with.

**15.6 Storage of
Petroleum
Products**

Right holders shall abide by Policy CLM-004-2002, *Interim Policy on the Storage of Petroleum Products on Crown Lands*, where applicable.

**15.7 Other
Permits and
Approvals**

Right holders shall obtain any other applicable municipal, provincial or federal permits and approvals for the submerged Crown land use in question.

16.0 Inquiries

16.1 Written Inquiries

Inquiries concerning this policy may be made in writing to:

Director, Crown Lands Branch
Department of Natural Resources
P.O. Box 6000, Fredericton
New Brunswick, Canada, E3B 5H1

16.2 Phone Inquiries

Telephone inquiries concerning this policy may be made by calling the Land Use Application Service Centre at 1-888-312-5600.

16.3 E-Mail Inquiries

E-Mail inquiries concerning this policy may be made by e-mailing the Land Use Application Service Centre at cltc@gnb.ca.

Appendix - Definitions

Backshore The part of the beach that stays “dry” most of the time, including at normal high tides, and which is located landward of the ordinary high water mark. The backshore is normally freehold land, except in cases where the Crown owns the upland property.



Boat Ramps Structures used to facilitate the launching and retrieval of a boat from the beach or land to the water.

Breakwaters Structures that protect a shore area, harbour, anchorage, marina, or any other land-form or water area behind them from the direct assault of waves.



Bulkheads Dual purpose structures, like retaining walls, that hold or prevent backfill or upland from sliding, while also providing protection against wave action.



Department The Department of Natural Resources, unless otherwise specified.

Dredging The removal or displacement of earth such as gravel, sand, mud, or silt, and/or other materials or debris from any submerged lands. Dredging is normally done for specific purposes or uses, such as constructing or maintaining navigation channels, harbours or marinas.

Dredge Spoil/ Disposal Dredge spoil is the material removed by dredging. Dredge spoil disposal is the depositing of dredged materials on land (including beach nourishment) or into water bodies for the purpose of either creating new or additional lands for other uses or disposing of the by-products of dredging.

Foreshore The inter-tidal zone or “wet” part of the beach that is exposed at low tide and located between ordinary high and low water marks. The foreshore is normally Crown lands and is submerged at high tide in tidal areas.



Gabion Baskets Steel wire-mesh baskets, which are filled with stones, rocks, or rubble and used primarily for erosion protection. Gabion Baskets are often stacked together to form entire walls or structures (e.g., seawalls, revetments or bulkheads).



Groins

Shore protection structures built perpendicular to the shoreline to trap littoral drift and cause accretion of the shore or beach on their updrift side.



Infilling

Refers to the dumping of any fill material below the existing bank or OHWM in order to reclaim land that has eroded or to increase the size of an existing upland property.

Intake Pipes

Pipes that take or extract water from a body of water. Typically used by fish plants, mills, etc.

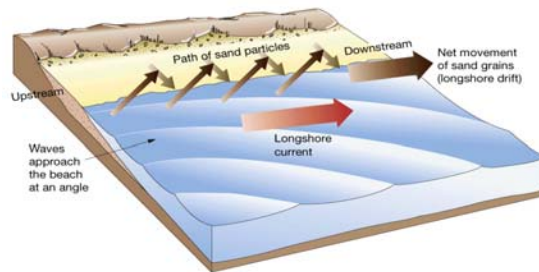
Jetties

Structures used at the mouths of inlets, rivers, or channels, etc., to deepen, stabilize and/or prevent their shoaling by directing and/or confining littoral materials and tidal flow.



Longshore or Littoral Current and Drift

Longshore or littoral current is a current that runs parallel to the shore as a result of waves breaking at an angle on the shore. Longshore or littoral drift is the load of sediment that is transported and deposited along the shore by this current.



Moorings

Devices used to tie and hold boats in place, normally consisting of a floating buoy attached to the bottom of a water body by a chain or rope connected to a cement block, helical anchor or other stationary weight.

NHWM

Normal High Water Mark (NHWM) is the visible high water mark of a lake or river where the presence and action of water are so usual and so long continued in ordinary years as to mark upon the bed of the lake or river a character distinct from that of the bank thereof with respect to vegetation and the nature of the soil itself (source: *Crown Lands and Forests Act, Section 1*).

OHWM

Ordinary High Water Mark (OHWM) is the average or mean height/elevation of high tides at a given location and in most cases also represents the normal ownership boundary between Crown and freehold lands in tidal areas.

Outfall Pipes

Pipes, including sewer or drainage pipes, which discharge into a body of water.

Permanent Docks or Wharves

Boat docking facilities that are not seasonal or removable in nature but rather, permanent structures used for private or commercial purposes and designed to accommodate single or multiple boats.

Physical Processes

For the purposes of the policy, nearshore aquatic systems that include longshore/littoral current and drift, as well as erosion and accretion processes.

Piers Platforms extending from the shore into the water, normally supported by piles or pillars, which are used to provide access to the water (e.g., pedestrians) and/or to temporarily land, load and unload vessels.



Professional Aquatic Consultant Any individual or firm that works professionally and has expertise in the aquatic consulting field.

Revetments Facings of stone, concrete, rip-rap, etc., built with a definable and organized sloped structure, to protect an existing shoreline area or bank from erosion.



Right Holder A proponent who has been issued a Lease, License or Easement by the Department of Natural Resources.

Rip-Rap Protective layers or facings of stone, usually well graded within wide size limits, randomly placed along a shoreline or bank to protect it from erosion. Also referenced as a building material (e.g., revetment).

Seasonal (e.g., Floating) Docks Boat docking facilities, seasonal or removable in nature, which are temporary structures used for private or commercial purposes and designed to accommodate single or multiple boats.

Seawalls

Structures separating land and water areas, primarily designed to protect a shoreline or bank from erosion and other damage due to wave action. Erosion control structures that are not bulkheads or revetments are normally referred to as seawalls.



Swimming Platforms

Floating platforms constructed of wood or other buoyant materials that are moored or anchored near shore and used as a base for swimming.

Tenure

A Lease, License or Easement issued to a proponent by the Department of Natural Resources.

Water-Dependent and Non-Water-Dependent Structures or Works

For the purposes of this policy, Water-Dependent Structures or Works are those that cannot logically exist in any location but on the water or submerged lands (e.g., wharf). Conversely, Non-Water-Dependent Structures or Works are those that can logically exist in another location (e.g., upland). Also, those that need or benefit by being near the water, but do not need to be on it, are non-water-dependent.
