

Marine Aquaculture Site Allocation Policy for the East Coast of New Brunswick



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1. Introduction

This policy is intended to establish guidelines for the allocation of sites in order to support the orderly development of the marine aquaculture industry. It applies to all of the tidal waters along New Brunswick's east coast that are under the administration and control of the Province, and takes into account the unique ecosystem found in this region. It also seeks to promote harmonious, sustainable co existence between aquaculture industry stakeholders and other users of the marine environment. This policy and the associated programs attest to the government's confidence in the growth potential of a sustainable aquaculture industry on New Brunswick's east coast.

For several decades, shellfish aquaculture has been the mainstay of New Brunswick's east coast marine aquaculture industry. Atlantic oyster (*Crassostrea virginica*) and blue mussel (*Mytilus edulis*) are the main species cultivated in these waters. Ongoing efforts are under way to cultivate alternate species in order to assess their commercial potential. This document is further intended to serve as a tool for establishing a framework aimed at supporting these research and development efforts.

1.1 Objective

The main objective of this policy is to provide a framework for promoting the orderly development of aquaculture on New Brunswick's east coast while taking the environmental, economic, and social aspects into account.

The achievement of this objective depends on:

- The establishment of management plans for bays in which aquaculture is recognized as a legitimate user of marine spaces on an equitable basis.
- The establishment, adoption, and enforcement of standards governing culture practices.
- A fair, diligent, and transparent process for processing aquaculture site applications.

1.2 Legal framework

Several statutes, regulations, and provincial and/or federal agreements govern aquaculture activities in New Brunswick. This framework includes:

- New Brunswick *Aquaculture Act*, Chapter A-9.2
- New Brunswick *Regulation 91-158* under the *Aquaculture Act* (O.C. 91-806)
- New Brunswick *Clean Environment Act*, Chapter C-6
- New Brunswick *Water Quality Regulation 82-126* under the *Clean Environment Act*, Chapter C-6
- New Brunswick *Clean Water Act*, Chapter C-6.1
- New Brunswick *Crown Lands and Forests Act*, Chapter C-38.1
- New Brunswick *Surveys Act*, Chapter S-17
- *Canadian Environmental Assessment Act* (1992, c.37)
- *Canadian Environmental Protection Act*, 1999 (1999, c. 33)
- *Canadian Fisheries Act* (R.S., 1985, c. F-14)
- *Canadian Navigable Waters Protection Act* (R.S., 1985, c. N-22)
- *Migratory Birds Convention Act*, 1994 (1994, c.22)
- *Species at Risk Act* (2002, c.29)
- Canada-New Brunswick Memorandum of Understanding on Aquaculture Development (1989)
- New Brunswick Department of Agriculture and Aquaculture and New Brunswick Department of Natural Resources Memorandum of Understanding on the transfer of administration and control of Crown land for the purpose of conducting aquaculture (2008)
- All other applicable statutes
- All other applicable regulations.

2. Aquaculture Areas

2.1 Growing area Classification of the Canadian Shellfish Sanitation Program (CSSP)¹

The Department of Agriculture and Aquaculture (the Department) promotes the production of shellfish suitable for human consumption. Environment Canada's sanitary surveys and hydrological surveys serve as the basis for the classification of Atlantic shellfish growing areas by the *Atlantic Regional Interdepartmental Shellfish Committee* (ARISC), a committee chaired by the Canadian Food Inspection Agency and composed of representatives from the Department of Fisheries and Oceans, Environment Canada, the Canadian Food Inspection Agency and appropriate provincial government departments.

The classification is based on water quality in the growing areas and on present and potential sources of pollution. For an area to be considered safe, its waters must be free of hazardous concentrations of pathogenic micro organisms, radionuclides, and toxic waste in accordance with the criteria established by the American National Shellfish Sanitation Program and the Canadian Shellfish Sanitation Protocols. A comprehensive sanitary survey consists of a bacteriological survey, which measures faecal material in the growing areas, and a shoreline survey, which identifies and quantifies pollution sources and estimates the movement, dilution, and dispersion of pollutants in the receiving environment.

The CSSP has three categories of classification, i.e. approved, conditionally approved, and closed. There are also areas that have not been classified.

2.1.1 Categories of classification

a) Approved

The sanitary survey indicates, that even under adverse conditions, wastewater effluent from neighbouring areas does not represent a risk to public health. In those zones, the median or geometric mean faecal coliform Most Probable Number (MPN) of the water does not exceed 14/100 mL, and not more than 10% of the samples exceed a faecal coliform MPN of 43/100 mL.

b) Conditionally approved

The classification of a shellfish growing area determined by the shellfish control authority to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved shellfish growing area is a closed area when the area does not meet the approved growing area criteria and is temporarily closed by the shellfish control authority.

c) Closed

Direct harvesting from this area is prohibited due to chemical or bacteriological contamination. Shellfish can be used only by permit under specified conditions for depuration, relaying, experimental purposes or other approved processing.

d) Unclassified

Unclassified areas are regions where the sanitary suitability for harvesting is undetermined and therefore not approved for shellfish harvesting at present. These areas need to be surveyed and classified prior to their approval for commercial harvesting.

¹ Environment Canada: *Canadian Shellfish Sanitation Program (CSSP)* www.atl.ec.gc.ca/epb/sfish/cssp.html
Canadian Food Inspection Agency: *Canadian Shellfish Sanitation Program - Manual of Operations*
www.inspection.gc.ca/english/anima/fispoi/manman/cssppccsm/toctdme.shtml

2.1.2 Guidelines

- a) Where **shellfish** aquaculture is concerned, applications will be received for new aquaculture sites in approved areas and conditionally approved areas. Applications for new sites and for amendment of the boundaries of existing sites in closed areas will be considered subject to the following conditions:
- i. The nature of the pollution that causes the closure of the area in question must be such that it allows for shellfish depuration under a protocol approved by the appropriate agencies.
 - ii. At the time of application, the applicant must provide proof that the responsible agencies are in agreement with the proposed depuration measures and would be willing to issue the relevant authorizations should the site application be approved.
- b) No new marine sites for **shellfish** aquaculture will be allocated in unclassified areas given that the sanitary quality of the water has not been determined. In the interests of prevention, those areas are assumed to be unacceptable for shellfish harvesting. Applications for new sites in an unclassified area will be received but will not be processed until such time as the area in question is classified. If, however, the area has not been classified within 2 years of the date of the application the application will be cancelled.
- c) Where species for aquaculture do not involve shellfish, applications will be received for new aquaculture sites in approved, conditionally approved, closed or unclassified areas.

2.2 Spat collection areas

The Department wishes to protect the areas where aquaculturists acquire their supply of spat. It will therefore not support the establishment of new marine aquaculture sites or any other activities that might limit access to this resource in recognized spat collection areas.



3. Bay Management Plans for the Allocation of Aquaculture Sites

3.1 Purpose

The aim of bay management plans is to identify the locations that are most favourable for sustainable aquaculture development. Bay management plans will provide the industry and its various stakeholders with a frame of reference aimed at promoting its growth and ensuring its stability. This in turn facilitates and expedites the process of reviewing and issuing aquaculture leases, aquaculture occupation permits and aquaculture licences. Bay management plans further seek to foster harmonious co existence among all bay users, while promoting sustainable aquaculture and equitable access to marine spaces. They are also a tool for managing the health of aquacultural produce and enhancing environmental management.

The identification of areas in bay management plans is based on different criteria corresponding to the aquaculture activity to be managed such as: areas acceptable/or not acceptable for the development of a particular type of aquaculture activity, acceptable culture methods, acceptable species, criteria related to the management of year classes, fish health management, etc. One example of the application of this concept would be the bay management planning exercise conducted jointly by federal and provincial agencies for water column oyster aquaculture on the East Coast of New Brunswick. The associated maps were subsequently included into a “Replacement Class Screening Report” approved under the *Canadian Environmental Assessment Act* in September 2007.

Similar planning exercises can therefore be envisaged in order to develop other bay management plans and maps when needed. These plans would be independent documents, separate from this policy.

3.2 Guidelines

- a) The Department accepts and processes applications according to specific bay management plans and associated maps when these exist.
- b) Applications in selected aquaculture development areas identified in bay management plans are not automatically approved, i.e., bay management plans do not eliminate other regulatory requirements and consultation will still occur on a project-by-project basis for applications submitted to the review process.
- c) The Department may establish advisory committees composed of aquaculture stakeholders to develop and review bay management plans and make recommendations to the Minister.
- d) The effective period for each bay management plan developed may vary.
- e) Procedures for amending bay management plans within prescribed time frames are defined in specific bay management plans.

Information on specific bay management plans is available at the Department offices.



4. Processing of Applications

Applicants wishing to obtain an aquaculture lease, an aquaculture occupation permit, or an aquaculture licence for an aquaculture site must submit an application to the Department and pay a fee that varies depending on the nature of the application, as set out in the *Aquaculture Act* or regulations.

An approval may be required from Transport Canada pursuant to the *Navigable Waters Protection Act* for aquaculture projects where structures are to be built or placed in, on, over, under, through or across any navigable water.

4.1 Guidelines

- a) The Department reserves the right to reject any application if, in the sole opinion of the Department, the application does not support the sustainable development of aquaculture.
- b) Generally, all applications will be processed on a first-come, first-served basis according to the original filing date. The Department however, intends to be strategic in terms of meeting the needs of industry to be economically and environmentally sustainable and may therefore establish priorities when it is considered to be in the industry's best interest.
- c) Should the applicant request a change in his/her application, the application will retain its position in the processing queue if the following conditions are met:
 - i. the requested change does not impact the production level or objectives of the original business plan or the original research and development proposal;
 - ii. the Department has not initiated the external consultation process.In all other cases, the application **does not retain** its position in the processing queue. It will be cancelled, and the change request will be handled as a new application. The appropriate application fees will have to be paid.
- d) In the case where the applicant dies during the review process, the file will be closed.

- e) An application will not be accepted if the applicant has:
 - i. been convicted of an offence under the *Aquaculture Act* or regulations within three years before the date of the application; or,
 - ii. failed to comply with the *Aquaculture Act* or regulations; or,
 - iii. failed to pay any aquaculture fees; or,
 - iv. failed to pay any others fees owed to the Department.
- f) Any non-payment of aquaculture fees or non-compliance with the *Aquaculture Act* or regulations will result in suspension of the processing of any application. The application may be cancelled if the client fails to take the required corrective measures within 90 days from the date a notice of non-compliance has been given in writing and delivered personally or sent by prepaid registered mail to the client.

4.2 Business plans and research and development proposals

For certain aquaculture applications, a business plan or a research and development proposal meeting the Department's requirements must be submitted. The need to present such information is specified where applicable in the chapters that follow. Guides on developing business plans and research and development proposals are available at the Department's regional offices.

4.2.1 Guidelines

- a) The research and development proposal or the business plan and the financial data it contains must pertain to the same legal person submitting the aquaculture application. In other words, if an individual submits an application in his/her own name as the holder, that individual may not submit a research and development proposal or a business plan in the name of a company, even if that individual is the owner or an associate of the company.

- b) The business plan must take into account all other aquaculture sites that the applicant holds or is entitled to occupy or that are the subject of another application. The activities conducted on those sites must be specified.
- c) In the case of an application submitted on behalf of a company, partnership or any other legal entity, financial information may be requested for each associate so as to assess the associate's investment capability.

4.3 Application and review procedures

4.3.1 Submission of application

The applicant must submit a complete application package, together with the fees, and all required schedules or accompanying documents, to the

appropriate Department's regional office. Detailed application guides are available at all the Department offices. The appropriate regional office will coordinate the review of the application package.

4.3.2 Preliminary review

Upon receiving an application, the staff verifies the application package for all necessary documents. Failure to provide a complete application package will result in its rejection.

4.3.3 Registration of applications

Upon receipt of a duly completed application, a file number will be assigned to the application, if applicable, and recorded in the Department's database for follow up purposes. If further information proves necessary, the applicant will be so notified by the Department staff.



4.3.4 Internal review and interagency review

The Department reviews all applications in-house for compliance with the terms and conditions of this policy. Depending on the type of application, it may also be subject to an interagency review coordinated by the Department and involving provincial and federal agencies. The provincial agencies generally involved are the Department of Environment, the Department of Natural Resources, the Department of Wellness, Culture and Sport (Archaeological services) and the Department of Fisheries. The federal agencies involved are Fisheries and Oceans Canada (including the Resource Management, Conservation and Protection, Small Craft Harbours, and Habitat divisions), Transport Canada (Navigable Waters Protection Program and Environmental Affairs), Public Works Canada, and Environment Canada. Each agency evaluates applications from the standpoint of its specific jurisdiction and forwards its comments and recommendations to the Department. Depending on the circumstances and the needs, other government and non government agencies/organisations or stakeholders may be consulted during the application review process.

4.3.5 Notice to adjacent property owners

Every application for a new aquaculture site must be brought to the attention of the owners of adjacent properties in the vicinity of the proposed site by means of a written notice, in accordance with the provisions of the *Aquaculture Act* or regulations. In addition, applications for amendments to the culture method(s) indicated on a licence may be subject to consultation of the adjacent property owners – see section 7.1 for further details.

4.3.6 Public notice

Every application for a vacant and a new aquaculture site must be brought to the attention of the public through announcements published in the newspapers, at the applicant's expense, in accordance with the provisions of the *Aquaculture Act* or regulations.

4.4 Cancellation of an application

The Department may cancel the processing of an aquaculture application if:

- a) the applicant is convicted of an offence under the *Aquaculture Act* or regulations after the date of the application;
- b) the results of the analysis of the business plan or the research and development proposal are negative or do not demonstrate or support sustainable aquaculture development;
- c) the applicant neglects to submit the required information or to comply with a written instruction within the prescribed time frame;
- d) the applicant indicates his/her intention to cancel the application;
- e) the applicant does not pay his aquaculture fees or does not comply with the *Aquaculture Act* or regulations and fails to take the required corrective measures within 90 days of receiving a written notice.

5. Aquaculture Authorisations and Use of Aquaculture Sites

The Department plans to adopt a strategic approach to respond to the industry's sustainability needs. The allocation of marine aquaculture sites will be considered only for purposes of commercial or institutional aquaculture operations.

5.1 Operators

An aquaculture lease, aquaculture occupation permit or aquaculture licence may be issued to an individual or a duly incorporated legal entity under the provincial laws in effect. Any such legal entity must be registered to conduct business in New Brunswick.

Where a group of individuals wishes to jointly acquire an aquaculture lease, aquaculture occupation permit or aquaculture licence, it may act as a duly incorporated company or association, a duly incorporated legal entity under the provincial laws in effect, or co owners in joint tenancy. Where an aquaculture lease, aquaculture occupation permit or aquaculture licence is issued in the form of a joint tenancy, the Department limits to two (2) the permissible number of individuals in this type of arrangement. The lease must state that a joint tenancy is involved.

5.2 Suitability of aquaculture sites

The Department cannot guarantee that the aquaculture site authorized under an aquaculture lease or an aquaculture occupation permit is suited for the purposes of aquaculture. It cannot be held liable for any problems associated with the performance or operation of the site.

5.3 Activities within aquaculture site boundaries

Aquaculture activities must be conducted within the site boundaries established and identified in the aquaculture lease or aquaculture occupation permit. This means that storage units, structures and equipment, including but not limited to cages, anchors, and mooring lines, associated with the aquaculture operation, must be fully contained within the site boundaries.

5.4 Terms of aquaculture authorisations

- a) The Department will not issue any leases that are valid for more than ten years.
- b) An aquaculture occupation permit is valid for up to three years.
- c) The term of an aquaculture licence is left to the Department's discretion and is clearly indicated on the licence. In no case will the term exceed the period approved in the aquaculture lease or occupation permit.

5.5 Registration of aquaculture leases and associated documents

All aquaculture leases must be registered at Service New Brunswick. When applicable, any associated document involved in the issuance of a new lease such as a surrender of lease, etc., must also be registered.

5.5.1 Guidelines

- a) The lessee will be required to register all documents pertaining to the acquisition, transfer or surrender of a lease, at his/her expense, and submit proof of registration within a prescribed period of time.
- b) Where the lessee desires to enter into an undertaking that requires the transfer of the leased land from the Land Registry System to the Land Titles System, the lessee will be responsible for arranging the transfer and bear all associated costs.
- c) If the land to be leased is in the Land Titles System, the lessee will have to register the lease in the Land Titles System.

5.6 Annual fee

Once an aquaculture lease, aquaculture occupation permit or aquaculture licence has been issued, the holder is required to pay an annual fee prior to April 1st of each year.

The amount of the annual fee varies according to the type of arrangement and the area under operation. A schedule of annual fees is available at the Department offices.

5.7 Time frame for start-up of operation

A holder who has obtained an aquaculture site and received the relevant authorizations must start up operations within the next twelve months. Failure to do so may lead to the revocation of the authorizations.

5.8 Annual operating report and other documents

The holder of an aquaculture licence must submit an annual operating report each year prior to April 1st using a form provided by the Department. The report must provide a detailed description of all activities related to the work and development carried out on each site during the past operating year. The annual report may be subject to random checks.

The licensee must prepare and keep books, records, accounts, and other documents required by or in accordance with the *Aquaculture Act* or regulations. At the request of the Registrar or an Inspector, the licensee must be prepared to provide books, records, accounts, and other documents in such detail and form as required by the *Aquaculture Act* or regulations in order to check the on site activities and the accuracy of the annual report.

Failure to supply the annual report or to provide the information upon request to the Registrar of aquaculture or an Inspector could result in the cancellation of a holder's aquaculture lease, aquaculture licence or aquaculture occupation permit.



6. Allocation of Aquaculture Sites

The Department reserves the right to consider a new application for an aquaculture site that was rejected in the past without having to notify the previous applicant(s).

6.1 New aquaculture sites

New aquaculture sites will be allocated in accordance with the criteria set out in the *Aquaculture Act* or regulations and this policy. In this document, a new aquaculture site also refers to an amendment in the boundaries of land.

6.1.1 Sites for commercial operations

- a) A business plan must accompany all applications and must clearly indicate the target production volume and desired surface area.
- b) The surface area allocated is determined according to the needs demonstrated in the business plan.

6.1.2 Sites for alternate species research and development

The Department may consider applications for new aquaculture sites for purposes of research and development targeting alternate species. The allocation of marine aquaculture sites for research and development of alternate species may be considered for commercial or institutional operations.



6.1.3 Guidelines

- a) Sites will be allocated through an aquaculture occupation permit and an aquaculture licence.

- b) Before the Department initiates a review of the aquaculture site application, the applicant must submit a general research and development proposal that includes a scientific protocol.
- c) The general research and development proposal must meet the following criteria:
 - i. evaluate new culture methods, materials or techniques for rearing, protecting and/or harvesting aquacultural produce that have not yet been utilized in New Brunswick;
 - ii. demonstrate that the proposal represents a significant technological advance and/or offers potential for the commercial development of the produce or the proposed technique;
 - iii. demonstrate that the project is different from all other existing aquaculture operations and all other projects being carried out in the same field;
 - iv. must be developed in consultation or in conjunction with a recognized scientific authority.
- d) A report describing the progress of the work must be submitted to the Department annually or at any other frequency that the Department may set.
- e) The surface areas will be defined on the basis of the protocol presented and approved by the Department.
- f) Operators of sites for alternate species research and development will not be permitted to engage in a commercial aquaculture operation for species commonly cultivated in the region unless an application for the appropriate aquaculture authorizations and a business plan have been submitted and approved. The proposed activity could be authorized under a lease in accordance with the provisions of the *Aquaculture Act* or regulations.

6.2 Overwintering sites

Given the climatic and physical characteristics along the coast, it can be relatively difficult to engage in aquaculture during the winter in certain locations owing to the thickness and duration of the ice cover. Certain producers are forced to move their produce and structures in the winter to prevent heavy losses. As a result, the aquaculturists concerned must have access to an appropriate overwintering site.



Typically, the overwintering period in a given year is considered to be from September 1 to May 1.

6.2.1 Guidelines

- a) A person cannot acquire an overwintering site if he/she is not leasing or subleasing an aquaculture site or holding an aquaculture occupation permit for the related aquaculture activity.
- b) Applications for overwintering sites must be justified and supported by a business plan or other document to the satisfaction of the Department.
- c) Applications are reviewed in accordance with the provisions of the Department's regular process established for new sites.
- d) The specific period of occupation is determined on the basis of the characteristics of the area, the activities carried on there and the results of the review process.
- e) Overwintering sites are allocated through aquaculture occupation permits and aquaculture licences.
- f) The site allocated for overwintering purposes must be legally identified through survey in accordance with the provincial standards established by the Association of New Brunswick Land Surveyors.
- g) Overwintering sites must be marked in accordance with the marking requirements issued under the *Navigable Waters Protection Act* when there is no ice cover and structures are deployed. They are exempt from all marking requirements when there is an ice cover and no navigation can occur. However, if the holder still wishes to mark the site location when there is an ice cover, this must be done in such a way that the markers used do not pose a danger to the public.
- h) If two or more persons intend to occupy and use the same overwintering site for the purpose of storage of their aquaculture equipment and stock, each must apply for and be issued an aquaculture occupation permit and aquaculture licence and observe the review process set out under the *Aquaculture Act* or regulations. Applications may be submitted and reviewed jointly.
- i) If an overwintering site is already occupied by one or more occupant, the Department will not accept an application from an additional applicant and will not issue an aquaculture occupation permit and aquaculture licence without the prior written consent from the existing occupant(s). Where consent is received, additional applicant(s) must observe the review process set out under the *Aquaculture Act* or regulations.
- j) An aquaculturist who ceases his/her operations and is no longer holder of a lease, sub-lease or aquaculture occupation permit for a particular type of aquaculture activity, can no longer hold an interest in an overwintering site for the related activity.

6.3 Vacant aquaculture sites

The purpose of this policy is to establish the parameters under which a marine aquaculture site, which remains under the administration and control of the Department for aquaculture purposes, becomes available for use.

6.3.1 Guidelines

- a) The Department will not maintain a waiting list of names of people expressing an interest in a site which may become vacant.
- b) The Department reserves the right to consider an application for a vacant aquaculture site without having to notify the previous holder(s).
- c) The Department may reallocate vacant sites located in approved areas, conditionally approved areas, and closed areas.
- d) Applications must be accompanied by the applicant's business plan.
- e) Generally, a vacant site does not need to be resurveyed since a legal description of the site already exists. However, the Department may request a new survey if necessary.
- f) Applications for vacant sites must be brought to the attention of the public through announcements published in the newspapers at the applicant's expense, in accordance with the provisions of the *Aquaculture Act* or regulations.
- g) The Department may decide, at its discretion, not to reallocate a vacant site.

6.4 Consolidation of sites

- a) The Department authorizes consolidation only in cases where aquaculture sites share a common lease boundary and have the same authorizations.
- b) A holder wishing to consolidate his/her sites must submit an application for consolidation, together with the applicable fees, to the appropriate the Department regional office.
- c) In the case of consolidation, the original aquaculture licences, leases or occupation permits are revoked, and a new aquaculture licence, lease or occupation permit is issued for the new site.
- d) The Department could request a new survey for the consolidated sites as it deems necessary.

6.5 Subleasing of sites

The purpose of this policy is to establish the parameters under which the holder of an aquaculture lease is permitted to temporarily transfer all or part of an aquaculture site. Accordingly, the subleasing of all or part of a marine aquaculture site to other interests will be authorized subject to the conditions set out below.

6.5.1 Guidelines

- a) A grower (individual – sole proprietor or in partnership or corporation) who is in non-compliance with the *Aquaculture Act* or regulations or who has failed to pay any fees owed to the Department cannot occupy and use a site by way of a sublease agreement until corrective measures have been applied. This is also applicable to a grower who has been convicted of an offence under the *Aquaculture Act* or regulations within three years before or after the date of the application.
- b) Use of the subleased site must be for the same aquaculture activities as those authorized by the existing lease and licence (same species and culture methods).
- c) The Department does not allow sublease arrangements in cases where a leaseholder possessing only one site wishes to sublease the entire site. A maximum of 49 percent of the total surface area of a site can be subleased.
- d) Where a person has more than one site, the Department allows part of one site or one or more entire sites to be subleased to support the operations of other individuals. However, the leaseholder must keep for his/her own operation a minimum area corresponding to 51 percent of the total surface area of all of the leaseholder's sites.
- e) As long as the leaseholder has a sublease agreement in effect, he/she is not eligible to apply for an additional site devoted to the same types of activities. This includes any application for a new aquaculture site, an expansion of existing site boundaries, a vacant aquaculture site, or the acquisition of a site through transfer. The only exceptions are:
 - i. where a leaseholder with a sublease agreement in effect is subleasing for overwintering purposes; and,
 - ii. where a leaseholder with a sublease agreement in effect acquires a site through transfer by being named the beneficiary of the site owing to the death of its leaseholder.
- f) The *Aquaculture Act* stipulates that "a person who does not hold an aquaculture licence must not carry on aquaculture." Any operator of a site (in whole or in part) must have an aquaculture licence. Where a sublease is for an area that is less than the entire site, the sublessee is issued an aquaculture licence, and

the leaseholder is issued an amended aquaculture licence. Where the sublease is for the entire site, the licence of the leaseholder is cancelled, and a new licence is issued to the sublessee.

- g) In cases where the sublease is for an area that is less than the entire site, an official survey plan may be required for the sublease. If an official plan is required then it must be prepared in accordance with the survey instructions issued by the Department and the *Standards for Marine and Submerged Lands Surveys for Aquaculture* of the Association of New Brunswick Land Surveyors.
- h) A legal sublease agreement between the parties involved will be required and must be prepared by a legal advisor (e.g. a lawyer). The content and format of the agreement must be in accordance with provincial requirements and must be prepared as per the *Standard Forms of Conveyances Act* or the *Land Titles Act*.
- i) The terms and conditions of the lease apply to the sublease and are the responsibility of both the leaseholder and the sublessee.
- j) There is no minimum term for a sublease.
- k) The maximum term of a sublease cannot exceed the remaining term of the existing lease, less one day.
- l) Annual lease fees remain the same and are the responsibility of the leaseholder. However, the leaseholder and the sublessee are responsible for their respective aquaculture licence fees.
- m) The renewal of a sub-lease agreement is not permitted unless both the holder of the lease and the sublessee can demonstrate, to the satisfaction of the Department, that without a renewal of the sub-lease agreement, the sustainability of the operations of the parties involved is compromised.

6.5.2 Cancellation of a sublease agreement

In the event that parties want to end a sublease agreement a document to this effect, signed by both parties, must be submitted to the Department. The former sublessee's licence will be revoked and a new licence issued to the lessee.

6.6 Site Transfers

The purpose of this policy is to establish the conditions under which the holder of an aquaculture lease can transfer all or part of an aquaculture site.

6.6.1 Guidelines

- a) If there are outstanding aquaculture fees for the site affected by the transfer, the lease cannot be transferred until the situation has been remedied.
- b) If there are outstanding real property taxes for the site affected by the transfer, the lease cannot be transferred until the situation has been remedied.
- c) A leaseholder whose lease has been cancelled for non-payment or non-compliance cannot acquire a new site by transfer until the situation has been remedied.
- d) A person who has outstanding aquaculture fees or any other fees owed to the Department, or is in a non-compliance situation with regards to aquaculture authorisations, cannot acquire a lease by transfer until the situation has been remedied.
- e) A transfer is not final until surrender of the lease has been signed and duly executed and the new leaseholder has signed the new lease.
- f) Once a surrender of lease document has been executed, it is irrevocable. If the new leaseholder does not sign the new lease, the aquaculture site becomes vacant.
- g) In the event of transfer, the aquaculture licence of the original leaseholder is revoked, and the new leaseholder is issued a new licence.
- h) In the event of transfer, the term of the new lease does not exceed ten years.
- i) The site affected by the transfer must be used for the same aquaculture activities as those authorized in the existing lease and licence (same species and culture methods). If the new leaseholder wishes to make changes, an application must be submitted in accordance with the prescribed terms and conditions after the licence and the lease are obtained.
- j) The annual lease fees are the same and are the responsibility of the new leaseholder, along with his/her aquaculture licence fees.
- k) For any new transfer application received prior to June 30 of each provincial fiscal year, the new leaseholder will not be required to pay the annual aquaculture lease and licence fees for the current fiscal year since they have already been paid. However, the leaseholder will be required to pay the annual lease fees in addition to the aquaculture licence fees for subsequent fiscal years.

- l) For any new transfer application received after June 30, the new leaseholder will be required to pay the lease and licence fees from the first day of the month in which he/she acquired the lease until March 31 of the following year. Aquaculture lease and licence fees paid by the previous leaseholder are not refunded.
- m) In the event of the transfer of a portion of the site, an official survey plan could be requested. Such a plan must be prepared in accordance with the survey instructions issued by the Department and the *Standards for Marine and Submerged Lands Surveys for Aquaculture* of the Association of New Brunswick Land Surveyors.
- n) In the event that an aquaculture site transfer application is submitted and there is another application at the same time attached to that site (for example: an application to amend the aquaculture licence), the first application is automatically cancelled unless it is a renewal application.

6.6.2 Lease pledged against a loan

A leaseholder must obtain the consent from the Department prior to pledging a lease against a loan.

6.6.3 Conveyance of security interest to a third party

The Department may agree to convey the interests in part or all of a leased site to a third party (financial institution or other) by way of security interest.

- a) No business plan will be required for this type of transfer.
- b) The third party must continue to honour all terms and conditions of the lease.
- c) Any transaction or amendment that pertains to the existing lease and is deemed significant by the Department could require the signatures of both parties before the requested amendments can be endorsed.
- d) In cases where the aquaculturist is subject to judicial settlement or bankruptcy, the lease may be transferred to a third party. The lease must be surrendered to the Province before the transfer can take place. Except as otherwise indicated, the Department may allocate to a third party all of the same rights and privileges that had been granted to the aquaculturist. The aquaculture licence associated with the lease will also be transferred, and the third party is bound by and must comply with the same

terms and conditions described in the aquaculture licence and lease.

- e) All costs involved in the transfer and all immediate and future annual lease and licence fees will be the responsibility of the third party.
- f) Transfer or acceptance of the assignment of security interest can take place only if all annual fees prescribed in the *Aquaculture Act* and regulations have been paid. Before approving such an application, the Department will notify the current holder and the third party of any outstanding amounts payable.

6.6.4 Bequests

Upon the death of the sole leaseholder of an aquaculture site, all interests in the lease become the responsibility of the deceased's estate.

The terms and conditions of a lease transferred by bequest will remain the same.

6.7 Renewals

The Department forwards written notice to holders of aquaculture leases and licences that are about to expire.

6.7.1 Guidelines

- a) Holders must indicate their intention to renew their aquaculture lease and licence by completing a renewal application and returning it, together with the applicable fees, to the appropriate Department's regional office. The lease and the licence will not be renewed if no renewal application is submitted by the date indicated by the Department.
- b) The general terms and conditions of the old lease and licence may be amended to reflect current conditions under the policy or the *Aquaculture Act* or regulations.
- c) Renewal may be contingent upon review of the annual reports or any other pertinent information requested by the Department to support a renewal.
- d) If the lease and the licence are not renewed, the former holder will be required to restore the site at the holder's expense and in accordance with the terms and conditions prescribed by the Minister. Otherwise, the Minister will have the site restored, and the former holder will assume the restoration costs.

7. Amendment of Aquaculture Licences

Licence holders requesting amendment of their aquaculture licence must pay the Department the prescribed fees at the time of application. Applications for amendment of aquaculture licences will be processed on a first-come, first-served basis according to the original filing date.

7.1 Culture methods

The culture methods approved for an aquaculture site are indicated on the aquaculture licence. Licensees wishing to amend the culture methods indicated on the licence must apply to the Registrar. The licensee must attach a business plan and provide the information required by or in accordance with the *Aquaculture Act* or regulations. If the amendment to the culture method is deemed significant then it will be subject to consultation with the owners of adjacent properties within 100 metres of the aquaculture site and to an interagency consultation. It could also be subject to other requirements, depending on the provincial or federal review processes that might be involved.



7.2 Licensed species

Species approved for aquaculture activities are listed in the aquaculture licence. Licensees wishing to amend the list of species they are likely to cultivate must provide the Registrar with the information required by or in accordance with the *Aquaculture Act* or regulations. The application may be subject to consultation of such organizations or agencies as the Department may consider appropriate.

8. Cancellation of Aquaculture Lease, Licence or Occupation Permit

8.1 Guidelines

- a) An aquaculture lease, licence or occupation permit may be cancelled upon the written request of the holder. Cancellation of aquaculture authorisations is official once a site inspection has been conducted by the Department and the site is returned in a manner considered satisfactory to the Department.
- b) A lease may also be cancelled for non-compliance with the laws and regulations or a breach of the conditions under which the aquaculture licence, lease or occupation permit was issued.
- c) Once an aquaculture lease has been cancelled, the former holder has no pre-emptive right to the site. If the former holder wishes to obtain the same site again, he/she must submit a new aquaculture lease and licence application and meet the requirements for a vacant site application.
- d) Once an aquaculture lease, licence or occupation permit has been cancelled for non-payment, payment of the outstanding fees remains the responsibility of the former holder.
- e) An aquaculture lease, licence or occupation permit may be revoked where the review of the annual report and other documents requested by the Department shows that the holder is not operating the site or has not complied with the terms and conditions set out in the aquaculture lease, licence or occupation permit.

8.2 Restoration

Within 90 days of cessation of aquaculture activities on the aquaculture site, the holder of the aquaculture occupation permit or the aquaculture lease must restore the site in a manner satisfactory to the Minister. If the holder does not restore the aquaculture site within the prescribed time or in a manner considered satisfactory by the Minister, the Minister will have the site restored, and the holder will be liable for all restoration costs.

9. Framework and Compliance

The long-term success of New Brunswick's east coast aquaculture industry depends on the optimum use of aquaculture spaces, the health of the aquacultural produce, and the continued high quality of growing waters. To promote the long-term survival of the industry and environmental stewardship, the Department may establish framework standards for aquaculture sites to ensure the responsible use of marine spaces.

The Department reserves the right to take all measures necessary to ensure compliance with any standards established, including suspension or cancellation of the aquaculture leases, occupation permits or licences of those found not to be in compliance.

10. Surveying

Surveying consists in identifying the boundaries of an aquaculture site according to the *Standards for Marine and Submerged Lands Surveys for Aquaculture*, the provincial standards established by the Association of New Brunswick Land Surveyors. Aquaculture sites must be surveyed in accordance with the provincial standards in effect as established by the Association of New Brunswick Land Surveyors.

Before undertaking a site survey, the surveyor will receive instructions from the Department and any other relevant departments and organizations. For purposes of marking, the corners/angles of the site will be identified with the same types of anchors approved and used in accordance with the standards established by the Association of New Brunswick Land Surveyors.

If the location of site boundaries cannot be identified from established reference monuments or points or shore alignments, or if the location of the surveyed points is uncertain, only a certified New Brunswick land surveyor is authorized to identify their precise location.

It is the applicant's responsibility to retain and pay for the services of a certified New Brunswick land surveyor of the applicant's choosing.

11. Marking Of Sites

Marine aquaculture sites for which an aquaculture lease or an aquaculture occupation permit is issued must be marked in accordance with the marking requirements issued under the *Navigable Waters Protection Act*. In the absence of marking requirements issued under the *Navigable Waters Protection Act*, it is recommended that sites be marked in accordance with the Department's marking standards described in section 11.1 below.

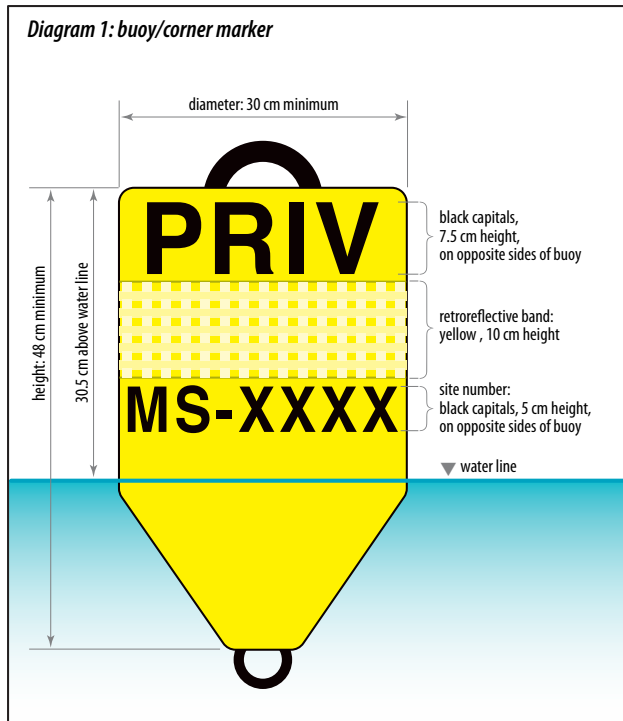
11.1 Marking standards

Marking is done by means of buoys anchored at each corner and/or angle corresponding to the points identified by a registered provincial land surveyor. Buoys must remain at the designated locations and be visible at all times during the navigation season, and they must be kept in good condition. It is therefore up to the holder to ensure that marker buoys and their moorings are constructed and maintained in a weather-resistant manner with weather-resistant materials, such that the buoy remains in position and stays the appropriate colour. In some instances, the installation of additional buoys between the corners of the site may be appropriate.

11.2 Marker buoy specifications

- a) Buoys must be cylindrical and yellow in colour. The part that shows above the water must be at least 30.5 cm in height and 30 cm in diameter. A retro reflective band at least 10 cm in height and yellow in colour must be applied to the buoy's entire circumference. The capital letters "PRIV", black in colour and 7.5 cm in height must be displayed on opposite sides of the buoy. The site number, e.g. "MS-XXXX", black in colour and 5 cm in height, must be displayed on the buoy as well (*see Diagram 1*).
- b) Buoys must be constructed and maintained in a manner and with materials that ensure that they remain in position and retain the characteristics specified in (a) above.

In the event that adjacent sites share the same corner, a single buoy is acceptable, provided that it displays the number of each of the sites in question.



It is the responsibility of the holder of the aquaculture lease or occupation permit to ensure that the system used to anchor the marker buoys is constructed and maintained in a manner and with materials that ensure that they remain in position and do not impede navigation or pose a danger to the public.

12. Implementation and Amendment of Policy

Upon the adoption of the policy it becomes in effect. The Department reserves the right to amend this policy at any time in order to meet the future needs of the marine aquaculture industry on New Brunswick's east coast or new regulatory changes. Invitations for comments from agencies and stakeholders on proposed changes are left to the Department's discretion.

Appendix 1 – Glossary

Alternate species

Means any marine organism intended for aquaculture, with the exception of the Atlantic oyster (*Crassostrea virginica*) and the blue mussel (*Mytilus edulis*).

Aquaculture

Means the cultivation of aquatic plants and animals, but does not include the cultivation of aquatic plants and animals in a laboratory for experimental purposes or in an aquarium, as stipulated in the New Brunswick *Aquaculture Act*.

Aquaculture licence

Means an aquaculture licence issued under section 6 of the New Brunswick *Aquaculture Act* and includes a renewal or an amendment of such a licence.

- **Commercial aquaculture licence**
Means a class of aquaculture licence that permits a licensee to conduct aquaculture for commercial gain.
- **Institutional aquaculture licence**
Means a class of aquaculture licence that permits a licensee to conduct aquaculture for research outside a laboratory or an aquarium, or for use in public fishery enhancement activities, and not for the purposes of commercial gain.

Aquaculture occupation permit

Means an authorization for temporary occupation and operation of an aquaculture site for a period not exceeding three years (section 26 of the New Brunswick *Aquaculture Act*).

Bottom culture

Means a form of aquaculture conducted on or in the substrate of an aquaculture site:

- a) on the substrate: the aquacultural produce must be free and in direct contact with the substrate;
- b) in the substrate: the aquacultural produce may be free or held by or in a structure buried in the substrate, provided that structure does not protrude above the substrate.

East coast

Means the Department's northeast and southeast administrative regions (see *Appendix 2*).

Holder

Means the holder of an aquaculture licence, an aquaculture occupation permit or an aquaculture lease.

Joint tenancy

Means a form of property ownership in which ownership is shared by two persons and automatically passes to the surviving partner upon the death of the other.

Lease, or aquaculture lease

Means a document issued by the Minister and administered by the Department that allows the occupation of a specific parcel of land for a specified period as per section 25 of the New Brunswick *Aquaculture Act*.

Minister

Means the provincial Minister responsible for aquaculture in New Brunswick and includes persons designated by the Minister to act on the Minister's behalf.

Mussel, or blue mussel (*Mytilus edulis*)

Means a bluish-black bivalve mollusc of the *Mytilidae* family.

Mussel aquaculture

Means the cultivation of mussels.

New aquaculture site

Means a site that is not designated as aquaculture land placed under the Minister's administration and control. In this document, a new aquaculture site also includes an amendment of the boundaries of land under an aquaculture lease or an aquaculture occupation permit where the amendment involves adding a portion of undesignated aquaculture land to an existing site.

Off-bottom culture

Means a form of aquaculture conducted in the water column, with the rearing structures

- a) placed directly on the substrate, or
- b) raised off the substrate.

In both cases, the structures are fixed in place (do not move with the tides).

Oyster, or Atlantic oyster (*Crassostrea virginica*)

Means a bivalve mollusc of the *Ostreidae* family occurring on the Atlantic coast of the Americas.

Oyster aquaculture

Means the cultivation of oysters.

Registrar

Means a person appointed to the position of Registrar under section 38 of the New Brunswick *Aquaculture Act*.

Shellfish

All mollusc species of the class Bivalvia i.e., molluscs having gills for respiration and a shell consisting of two hinged sections called valves (ex: clams, oysters, mussels, scallops, etc.).

Shellfish aquaculture

Means the cultivation of shellfish.

Site

Means a marine aquaculture site under the administration and control of *Her Majesty the Queen in Right of the Province of New Brunswick*, specified in an aquaculture licence, at which aquaculture is to be carried on, is carried on, or was carried on.

Spat

Means a group of young bivalve molluscs shortly after their attachment to a substrate.

Suspended culture

Means a form of aquaculture conducted in the water column or at the surface, where the structures are anchored but float or move with the tides.

The Department

Means the provincial department responsible for aquaculture in New Brunswick.

Vacant site

Means a designated marine aquaculture site leased for aquaculture purposes and for which the lease was cancelled or terminated more than 90 days, or at the date which the Department is satisfied that the site has been restored to its satisfaction; whichever occurs first.

Appendix 2 – Map of Administrative Regions of the Department of Agriculture and Aquaculture

