

**SUBJECT:**           **LEASING AND LICENSING POLICY  
FOR MARINE SHELLFISH AQUACULTURE (19/12/2)**

**Policy Number:**  
**File Number:**

**Effective Date:**

**Approval:**

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Cathy LaRoche, Deputy Minister

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Date

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# 1.0 Introduction

## 1.1 Purpose

The purpose of this policy is to:

- Establish guidelines for the allocation and use of sites to support the orderly development of the marine shellfish aquaculture industry in New Brunswick.
- Establish a framework to support commercial development efforts.
- Promote positive relationships between Aboriginal Nations, government agencies, aquaculture industry stakeholders and other key users of the marine environment.
- Ensure that aquaculture land is being sustainably used to its full potential.

## 1.2 General Policy Statement and Scope

It is the policy of the Department of Agriculture, Aquaculture and Fisheries (the Department) that suitable submerged Crown lands may be allocated for commercial or research and development shellfish aquaculture purposes.

This Policy applies to the allocation and use of marine shellfish aquaculture sites in New Brunswick (NB) tidal waters.

## 1.3 Aboriginal Nations

Aboriginal Nations have recognized the importance of marine shellfish as traditional food, artwork and personal adornment for centuries. In addition to ongoing harvesting of shellfish for personal use, some Aboriginal Nation communities are actively participating in the sector and others have expressed an interest in commercial shellfish aquaculture production.

The Department is committed to supporting Aboriginal Nation communities who are interested in participating in the shellfish aquaculture sector through allocation of leases, site planning processes, and other means.

## 1.4 Background

In more recent times, shellfish aquaculture has been the mainstay of New Brunswick's east coast marine aquaculture industry where the oyster (*Crassostrea virginica*) is the main species cultivated. In the Bay of Fundy, shellfish aquaculture has largely focused on the Blue mussel (*Mytilus edulis*) in concert with finfish operations. Industry and the Department continue to explore opportunities for alternate species to assess their commercial potential within the aquaculture sector.

In total, there are over 500 shellfish aquaculture sites in NB, which represents over 2,600 hectares of aquaculture land. Most of these sites are located on the East Coast of the province.

## 1.5 Objective

The main objective of this policy is to increase economic prosperity in coastal communities by providing a framework for promoting the orderly development of sustainable (environmental, social and economic) aquaculture in NB.

The achievement of this objective depends on:

- The establishment of management plans, particularly for the East Coast, for bays in which aquaculture is recognized as a legitimate user of marine spaces and is afforded access on an equitable basis with other users.
- Encouraging the effective use of limited space allocated to aquaculture development.
- The economic sustainability of the aquaculture sector.
- Taking into account environmental, economic and social aspects.
- A fair, diligent, responsive and transparent process for the allocation and processing of aquaculture site applications.
- Fulfilling New Brunswick's Duty to Consult Policy and legal obligations related to the protection of Aboriginal and Treaty Rights.
- Ensuring that information collected and used by DAAF is managed and protected in accordance with the *Aquaculture Act*, the *Right to Information and Protection of Privacy Act* and other applicable legislation.

**1.6 Authority** New Brunswick *Aquaculture Act*,  
New Brunswick *General Regulation – Aquaculture Act*

### 1.7 Definitions

***Aquaculture*** Aquaculture means the farming of aquatic organisms for commercial or scientific purposes.

***Aquaculturist*** A person who practices aquaculture.

***Bay of Fundy*** Means the department's southwest administrative region (*see Appendix 1*).

***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 1*).

***Farm Management Plan*** A document that sets out how an aquaculture licence holder will address such issues as fish health management, environmental mitigation, farm operations and containment management at an aquaculture site.

<b><i>Minister</i></b>	Means the provincial Minister responsible for aquaculture in NB and includes persons designated by the Minister to act on the Minister's behalf.
<b><i>Off-bottom culture</i></b>	Means a form of aquaculture conducted in the water column, with the rearing structures <ul style="list-style-type: none"> <li>a) placed directly on the substrate, or</li> <li>b) raised off the substrate.</li> </ul> In both cases, the structures are fixed in place (do not move with the tides).
<b><i>Registrar</i></b>	Means a person appointed to the position of Registrar under section 38 of the NB <i>Aquaculture Act</i> .
<b><i>Shellfish</i></b>	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.).
<b><i>Site</i></b>	Means a marine aquaculture site under the administration and control of <i>Her Majesty the Queen in Right of the Province of New Brunswick</i> , specified in an aquaculture licence, at which aquaculture is to be carried on, is carried on, or was carried on.
<b><i>Suspended culture</i></b>	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.

## 2.0 Aquaculture Authorizations

To conduct aquaculture on Crown land a land tenure and an aquaculture licence are required. The tenure gives the aquaculturist the authority to occupy an aquaculture site, while the licence permits the aquaculturist to conduct the activity of aquaculture on a site.

### 2.1 Tenure

#### 2.1.1 Lease

An aquaculture lease is the legal contract between the Minister and the leaseholder which grants the right to exclusive occupancy of the lease site area (i.e. the seabed and the water column above it) to the leaseholder in accordance with the terms and conditions contained therein for the purposes of aquaculture. Generally, shellfish leases are issued for a period of up to twenty years.

#### 2.1.2 Occupation Permit

An occupation permit is an authorization issued by the Minister granting the non-exclusive use of the aquaculture site area for a period not exceeding three years. An occupation permit is generally issued for a research and development site or when the Department allows the temporary occupation of land in order to respond to strategic needs.

### 2.2 Licence

An aquaculture licence is a legal document issued by the Registrar of Aquaculture that authorizes an aquaculturist to conduct the activity of aquaculture at a specific location. The licence will specify operating conditions for the aquaculturist. The term of a licence is left to the department's discretion; it will generally match the term of the tenure, and in no case will it exceed it.

For the purposes of this policy, there are two classes of aquaculture licence:

- Commercial aquaculture licence: a class of licence that permits a licensee to conduct aquaculture for commercial gain.
- Institutional aquaculture licence: a class of 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.

Shellfish aquaculture licences generally specify the shellfish cultivation method permitted on a site: bottom culture, off-bottom culture and/or suspended culture.

### **2.3 Obligations of the Aquaculturist**

The aquaculturist is authorized to conduct aquaculture on their aquaculture site, per their aquaculture authorizations. In turn, the aquaculturist must comply with the terms and conditions set out in their authorizations, and in accordance with the *Aquaculture Act* and *General Regulation – Aquaculture Act*.

## **3.0 Types of Aquaculture Sites**

### **3.1 Commercial Sites**

Commercial aquaculture sites fall into three general categories: production sites, overwintering sites and holding sites. In all cases, the surface area allocated by the Department is determined according to the needs demonstrated in the business plan or any other document requested by the department, and where they exist, by provisions of specific Bay Management Plans.

#### *3.1.1 Production Sites*

Production sites are aquaculture sites where year-round aquaculture can take place. A site must offer both protection and food, so it is important to measure all the physical parameters affecting site quality based on the rearing method being considered. A site will have the depth required to allow for the overwintering of aquaculture produce and structures during the winter.

Production sites will be granted by lease and commercial aquaculture licence.

#### *3.1.2 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 aquaculturists are forced to move their produce and structures from their production sites in the fall to reduce mortalities. As a result, the aquaculturists concerned must have access to an appropriate overwintering site.

The overwintering period can vary on a site-by-site basis as indicated in each specific licence and/or occupation permit. Typically, the overwintering period in a given year is from September to May. 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.

Applications for overwintering sites will be assessed on a case-by-case basis and will only be considered as a last resort after having evaluated

management changes to other production sites, boundary amendments or a site relocation that is more conducive to year-round shellfish production. The Department will not allocate a new production site if it requires a separate overwintering site. A person cannot acquire an overwintering site if they do not hold a tenure, or a sublease, for a production site for the related aquaculture activity.

Overwintering sites will be granted by occupation permit and commercial aquaculture licence.

### 3.1.3 Holding Sites

Holding sites may be used for the temporary storage of shellfish that are destined for the marketplace. Applicants must have a land-based facility, hold a processing licence under the *Seafood Processing Act* and be licenced for shellfish under the *Safe Food for Canadians Act*.

Applications for holding sites will be considered on a case-by-case basis, and applicants must clearly demonstrate why their existing operations do not allow for proposed holding activities.

Holding sites will be granted by lease and commercial aquaculture licence. In some instances, holding sites may be issued by occupation permit with specified time periods for occupancy. Only bottom and off-bottom cultivation techniques will be permitted on a holding site.

## 3.2 Research and Development Sites

The Department may consider applications for the purposes of research and development aimed at optimizing productivity (e.g. improving rearing techniques, genetics, etc.) or targeting alternate species (i.e. species other than oysters on the East Coast or Blue mussels in the Bay of Fundy). The maximum area for a research and development site is 1 hectare.

Before the Department initiates a review of the aquaculture site application, the proponent must submit a general research and development proposal that includes a research protocol. Information on the research and development proposal can be found in the [name of document here].

If approved, a report describing the progress of the work must be submitted to the department annually or at a frequency determined by the department.

Sites for research and development will be allocated through an aquaculture occupation permit and a commercial or institutional aquaculture licence for a period of three years.



## 4.0 Shellfish Aquaculture on Crown Land

### 4.1 New Brunswick Bay Management Plans

The purpose of Bay Management Plans (BMPs) is to identify the locations appropriate for sustainable aquaculture development, within NB's tidal waters. BMPs provide industry and other users of the marine environment with a frame of reference that promotes stability, equitable sharing of space and permits growth. This in turn facilitates and expedites the process of reviewing and issuing aquaculture authorizations. They are also a tool for managing the health and quality of aquacultural produce and enhancing environmental management.

BMPs provide various criteria for aquaculture decision making: type of aquaculture activity, areas for the development or exclusion of aquaculture, culture method or species; environmental management; fish health and invasive species management; conservation, other users of marine space, etc.

At the present time, BMPs have only been developed for eastern New Brunswick shellfish aquaculture.

Information on specific BMPs can be found by [contacting the Department](#).

The Department accepts and processes applications according to specific BMPs and associated maps when these exist.

Applications for sites outside of areas identified for aquaculture in BMPs may be accepted if, in the opinion of the Department, they have potential for sustainable aquaculture growth while safeguarding commercial fishing activities, the activities of other users of the marine space and do not pose undue risks to the environment. These applications may require a lengthier review process to ensure compatibility between sustainable aquaculture development objectives and the particular proposal.

### 4.2 Canadian Shellfish Sanitation Program (CSSP)

In order to minimize the potential health risks associated with consuming bivalve molluscan shellfish and to protect public health, the Canadian Food Inspection Agency, Fisheries and Oceans Canada and Environment and Climate Change Canada operate the CSSP.

The CSSP classifies marine areas according to suitability for shellfish production and provides a management regime that protects food safety. The program has various categories of classification; there are also areas where sanitary conditions have not been determined and are therefore unclassified.

The Department supports the production of shellfish suitable for human consumption and aquaculture site approvals will be based on CSSP classifications.

Applications for new aquaculture sites will only be accepted in areas classified within the CSSP as approved and conditionally approved.

Per the CSSP, unclassified areas are zones where the sanitary quality of the water has not been determined.

## **5.0 Application for a New Aquaculture Site**

### **5.1 Basic Eligibility**

In accordance with the *Aquaculture Act* and regulations, a person wishing to conduct aquaculture in NB must make application to the Department for an aquaculture licence and land tenure (the latter only applies if the proposed aquaculture operation is located on Crown Land).

For the purposes of this policy, a person is defined as an individual or a legally registered entity.

### **5.2 New Aquaculture Site / Boundary Amendment**

A new aquaculture site refers to an application for a tenure and licence for an aquaculture site or an amendment in the boundaries of an existing aquaculture site.

The allocation of marine aquaculture sites will be considered only for the purposes of commercial or institutional aquaculture operations.

### **5.3 Application Process**

There are 3 stages to the application process:

#### *Stage 1 - Pre-Application:*

Prior to the submission of an application, a proponent must demonstrate that they have the financial and technical expertise to operate an aquaculture site, and that the site will be developed in conjunction with site utilization standards. To this end, the proponent must submit financial information and a farm management plan (which, among others, outlines technical and production information), which will then be assessed by the Department. The Department must be satisfied with this information prior to the proponent moving on to Stage 2.

#### *Stage 2 - Application Submission and Review:*

The applicant submits a complete application package and fees to the Department, which will then be assessed for compliance with the terms and conditions of this policy, the *Act* and regulations. The application may then be subject to consultation with Aboriginal Nations, other provincial and federal agencies (who will evaluate applications based on their own respective jurisdiction), fishery organizations, and other affected stakeholders.

### *Stage 3 - Decision:*

Upon completion of an application's review, the decision will be communicated to the applicant. If approved, a letter of offer will be sent containing conditions that the client must fulfill prior to the aquaculture authorizations being issued (e.g. arranging to have the site surveyed at their own expense, etc.).

For more information on the processing of applications and application requirements, please refer to the [\[shellfish application guide\]](#).

#### Guidelines:

- a) The Department reserves the right to reject any proposal if, in the sole opinion of the Department, the proposal does not support the sustainable development of aquaculture.
- b) An application may not be accepted if the applicant has been convicted of an offence under the *Aquaculture Act* or regulations within three years before the date of the application; failed to comply with the *Aquaculture Act* or regulations, or a condition of licence or tenure; or, is not in good standing with the Department (i.e. has outstanding fees, rents or property taxes or has compliance issues with the Department).

Similarly, the assessment of an application may be suspended or cancelled if an applicant has any compliance issues under the *Aquaculture Act* or regulations, or with any condition or term of an existing aquaculture authorization.

- c) Generally, all applications will be processed on a first-come, first-served basis according to the filing date of a completed application. 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 public interest.
- d) Aquaculture authorizations will be allocated in accordance with the criteria set out in the *Aquaculture Act* or regulations, this policy and any applicable BMP.

## 6.0 Other Tenure and Licence Applications

Once a tenure and licence are issued, an aquaculturist may make application for any of the transactions noted in this section. An application will be subject to the same eligibility criteria and guidelines as noted in section 5 of this policy. The application process will vary depending on the nature of the application. (For more information on the processing of applications and application requirements, please refer to the [\[shellfish application guide\]](#).)

**6.1 Consolidation of Sites** Site consolidation is the merging of two or more aquaculture sites into a single site. The Department authorizes consolidations only in cases where aquaculture sites share a common tenure boundary.

**6.2 Sub-Division of a Site** Sub-division is the division of one aquaculture site into two or more sites with the same aquaculture authorizations and within the same footprint of the existing lease site.

**6.3 Assignment of Lease** An assignment is the process whereby a person, the assignor, transfers all the rights or benefits under a lease to another, the assignee. The assignor is released of all their obligations under the lease, which are transferred to the assignee. A lease may only be assigned upon the written consent of the Registrar.

Assignments may occur in the following instances: upon transfer of an operation\*; upon the death of the sole leaseholder; upon the granting of security for a mortgage; upon the transfer of a lease from their personal name to their incorporated entity and upon the bankruptcy, insolvency or default of the leaseholder.

\*Note: in the case of transfer of an operation, an assignment will only be considered from an aquaculturist who is in compliance with their approved production plan, and who has held the site for a minimum of 5 years.

**6.4 Subleasing** Subleases, of all or a portion of an aquaculture lease, will be assessed by the Department on a case-by-case basis.

Use of a subleased site must be for the same aquaculture activities as those authorized by the existing lease and licence (same species and culture methods). As long as a 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.

A legal sublease agreement between the parties involved will be required. This agreement must be prepared by a legal advisor (e.g. a lawyer) and must be consented to in writing by the Registrar, following which the

sublessee will be issued a licence to conduct aquaculture on the subleased portion of the site.

**6.5 Amendment of Licence** Licensees wishing to amend the culture method(s) or species specified in a licence may make application to the Department.

**6.6 Renewals** The Department will give written notice to an aquaculturist whose aquaculture authorizations are about to expire and the aquaculturist must indicate their intention to renew their authorizations. Renewal is not automatic; it is contingent upon review of the annual reports or any other pertinent information requested by the department to support a renewal. Prior to renewal, the Department must be satisfied that the site is being utilized in accordance with the site's authorizations. Subject to the provisions in place at the time of renewal, new conditions may be imposed on aquaculture authorizations at the time of renewal.

## 7.0 Appeals

An applicant for an aquaculture authorization who is dissatisfied with a decision of the Registrar under the *Aquaculture Act* or the regulations may appeal a decision of the Registrar to the Licensing and Penalty Appeal Board.

## 8.0 Development and Ongoing Operations at a Site

**8.1 Site Utilization** The Department is committed to ensuring that the aquaculture sector continues to grow and provide economic benefits to the province. Sites that are being underutilized do not significantly contribute to the growth of the aquaculture industry, and, in some cases, are preventing the expansion of other operations. It is the Department's goal to ensure that designated aquaculture land is being used to optimum capacity, based on factors such as the environment in which a site is located, acceptable production standards and site-specific production plans.

A proponent will be required to submit a production plan on how the site will be developed over a maximum of 6 years (the "development" phase), and how they intend to operate the site for the remainder of the term (the "commercial" phase). If an application is approved, the production plan will become a condition of licence that must be adhered to by the aquaculturists, and aquaculturists will be required to submit an annual operating report outlining the extent of operations at the site.

Compliance with a production plan will be subject to audit by the Department, which may include site inspections, review of annual reports, discussions with the aquaculturists, etc. The aquaculturist should be prepared to provide documentation to verify activity and support the annual report (*e.g. sales invoices or other proof deemed acceptable to the Department*). The

onus rests with the aquaculturist to demonstrate adherence to the production plan and the rate of utilization.

Where the Department determines that a site is not being used to an acceptable standard the aquaculture authorizations may be revoked. Any land that is returned to the Department may be re-allocated to another aquaculturist.

## 9.0 Cancellation of Aquaculture Authorizations

An aquaculture licence may be revoked and a tenure cancelled in the following instances:

- 1) upon the written request of the aquaculturist, or
- 2) by the Department in the event of non-compliance by the aquaculturist with the *Aquaculture Act* or regulations, or with any condition of aquaculture licence or tenure.

In both instances:

- the aquaculturist must restore the site in a manner satisfactory to the Department. If the aquaculturist does not restore the site within the prescribed time or in a manner considered satisfactory by the Department, the Department will have the site restored at the aquaculturist's expense.
- payment of all outstanding fees, rents or property taxes remain the responsibility of the aquaculturist.

## 10.0 Policy Inquiries

Inquiries concerning this policy may be directed to the Registrar of Aquaculture at the following:

By Mail: Registrar of Aquaculture  
Department of Agriculture, Aquaculture and Fisheries  
1350 Regent Street,  
Fredericton, New Brunswick  
E3C 2G6

By E-mail: [address]

By Phone: [#]

## Appendix 1 – Map of Administrative Regions of the Department of Agriculture, Aquaculture and Fisheries

