

# **SUBMERGED LANDS RULES**

MAY 28, 2000

## **BUREAU OF PARKS & LANDS DEPARTMENT OF CONSERVATION**

<b>AGENCY:</b>	<b>04</b>	<b>DEPARTMENT OF CONSERVATION</b>
	<b>059</b>	<b>BUREAU OF PARKS &amp; LANDS</b>
<b>CHAPTER:</b>	<b>53</b>	
<b>RULE TITLE:</b>		<b>SUBMERGED LANDS RULES</b>

22 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0022

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## **PREAMBLE**

The State of Maine holds the Submerged Lands, as defined herein, in trust for the benefit, rights and use of the general public. The private use of Submerged Lands requires a lease or easement from the Bureau of Parks and Lands, which has been authorized by the Maine Legislature to grant such conveyances. Because exclusive, private uses of Submerged Lands restrict the public's ability to exercise their rights to use and enjoy these lands, the issuance of any conveyance requires careful consideration of the impacts of such conveyances on public trust rights as well as a just and fair compensation to the public for the private use of the Submerged Lands.

## **SUMMARY**

These Rules set forth the Bureau's regulations and policies relating to the use and conveyance of Submerged Lands owned by the State of Maine and held in the public trust for the people of Maine. These Rules provide definitions of key terms, explain when a lease or easement of Submerged Lands is required, and establish the process to be used in granting such leases and easements.

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### **1.1 AUTHORITY**

These Rules are established in accordance with the Submerged Lands Act - 12 MRSA §1801, §1803 and §1862 and the Administrative Procedures Act - 5 MRSA §8051 to §8060.

### **1.2 PURPOSES**

The purposes of these Rules are to ensure a consistent and standard approach to the management of the Submerged Lands of Maine; to protect customary and traditional public access ways to, and public trust rights in, on or over the Submerged Lands and the waters above those lands; to protect fishing and other existing marine uses of the Submerged Lands; to protect ingress and egress of riparian owners; to balance competing uses in, on or over Submerged Lands; and to provide procedures for the issuance of conveyances for use of Submerged Lands.

### **1.3 APPLICABILITY**

These Rules apply to all Submerged Lands of the State of Maine (herein defined).

## **1.4 DEFINITIONS**

For purposes of these Rules, the following definitions shall apply:

### **A. Bureau**

"Bureau" means the Maine State Department of Conservation, Bureau of Parks and Lands.

### **B. Commercial Fisherman**

"Commercial fisherman" means a person whose livelihood depends upon the harvesting of shellfish, finfish or other natural, renewable products of the sea, including those products produced by aquaculture.

### **C. Commercial Fishing**

"Commercial fishing" means any activity involving the landing or processing of shellfish, finfish or other natural, renewable products of the sea, or other activities, including aquaculture, directly related to landing or processing shellfish, finfish or natural sea products and loading or selling these products. Commercial fishing also includes facilities which are directly involved in commercial fishing activities, including but not limited to, fish piers, lobster impoundments, fish processing facilities, fuel and ice facilities, berthing for fishing boats, and floats or piers for the storage of gear.

### **D. Commercial Marine Activities**

"Commercial marine activities" means water-dependent commerce and industry.

### **E. Complete Application**

"Complete application" means an application for a Submerged Lands lease or easement for which all application processing fees have been paid and for which all information required of the applicant and necessary for the determination of preliminary findings has been submitted. Information required of the applicant shall include, but not be limited to sufficient proof of right, title or interest in adjacent shoreland property, a description of the proposed project, and a site plan of sufficient detail to allow accurate determination of the area of Submerged Lands to be occupied by the project.

### **F. Conveyance**

"Conveyance" means a lease or easement issued by the Bureau conveying a right to limited use of Submerged Lands for some specific and defined purpose for a fixed period of time.

**G. Director**

"Director" means the Director of the Bureau.

**H. Fill**

"Fill" means the placement of solid material other than pilings or other open support structures upon Submerged Lands.

**I. Littoral Zone**

"Littoral zone" means the area of Submerged Lands adjacent to shoreland property within which the property owner may request permission for a lease or easement, subject to review by the State and in accordance with applicable laws and rules.

**J. Mean Low Water**

"Mean Low Water" means the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (National Tidal Datum Epoch) as defined by the National Oceanic and Atmospheric Administration. For purposes of these Rules, an approximation of mean-low water made by observation of low tide during a 0.00 foot tide will generally be sufficient.

**K. Natural Low Water Mark of Great Ponds**

For unimpounded lakes, the "natural low-water mark" is the average low-water mark as estimated over a 5-year period. For impounded lakes, "the natural low-water mark" is the estimated low-water mark of the lake in an unimpounded state.

**L. Non-Permanent**

"Non-permanent" means uses which occupy Submerged Lands for less than seven months in any one calendar year.

**M. Permanent**

"Permanent" means uses which occupy Submerged Lands during seven or more months in any one calendar year.

**N. Pipelines, cables and Similar linear structures**

"Pipelines, cables and similar linear structures" means any structure that is less than one foot (12 inches) in total width.

**O. Port Facility**

"Port facility" means structures necessary for water borne commerce which are used for the purposes of loading and unloading cargo or passengers.

**P. Public Access Way**

"Public access way" means an area or strip of land used for passage by the general public to Submerged Lands. The Bureau recognizes that such access ways can be established by a variety of legal means, including but not limited to custom, prescription, implied dedication, acquiescence, laying out and acceptance, dedication and acceptance, purchase or gift, or tax acquired property.

**Q. Public Trust Rights**

For the purpose of determining specific uses of publicly owned Submerged Lands which may take place without the need for a lease or easement, "Public trust rights" means transitory fishing, fowling, recreation, navigation and other customary or traditional uses whereby the public may use or enjoy the waters, Submerged Lands, and associated natural resources of the State of Maine. This definition should not be construed to be a complete definition of "Public trust rights" nor is it meant to be used for any other purpose than that stated herein.

**R. Slip Space**

"Slip space" means the area adjacent to a pier or float that is used for berthing a boat. For purposes of computing the area of a Submerged Lands lease, slip space shall include the finger floats which are immediately adjacent to the berthing area and are used solely for access to and from berthed vessels. Slip space does not include principal piers or floats which provide access to finger floats. If no finger floats are present and vessels berth adjacent to a principal pier or a general service area, only the space occupied by the vessel is considered slip space.

**S. Structure**

"Structure" means any object built or placed upon Submerged Lands.



## **T. Submerged Lands**

"Submerged Lands" means:

1. All land seaward from the mean low-water mark or a maximum of 1,650 feet seaward of the mean high-water mark, whichever is closer to the mean high-water mark, out to the 3-mile territorial State marine boundary.
2. All land below the mean low-water mark of tidal rivers and streams up to the farthest natural reaches of the tides;
3. All land below the natural low-water mark of ponds which in their natural state are 10 or more acres in size; and
4. The riverbed of international boundary rivers out to the international boundary line, including segments of the St. John, St. Francis and St. Croix Rivers. The bed is defined as land lying between defined banks, created by the action of surface water and characterized by a lack of terrestrial vegetation and devoid of topsoil.

## **U. Upland Uses**

"Upland uses" means uses that can operate in a location other than on Submerged Lands. Such facilities shall include, but are not limited to, residences, offices, restaurants and parking lots.

## **V. Water-Dependent Uses**

"Water-dependent uses" means uses that are functionally dependent for their primary purpose on a waterfront location and cannot reasonably be located or operated on an upland site. Such facilities shall include, but not be limited to, piers and docks, port facilities, boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are engaged in watercraft construction, maintenance or repair, aquariums and marinas.

## **1.5 USES REQUIRING A CONVEYANCE**

### **A. Uses**

All uses of Submerged Lands require a conveyance from the Bureau with the following exceptions.

### **B. Exceptions**

1. Exercise by the public of non-exclusive public trust rights.
2. Non-Permanent Structures only as follows:
  - a. Water-Dependent uses which in total area occupy less than 500 square feet of Submerged Lands.
  - b. Commercial fishing uses which in total area occupy less than 2,000 square feet of Submerged Lands.
3. Activities and structures covered under aquaculture leases, as defined and regulated by the Maine Department of Marine Resources, under 12 MRSA §6072.
4. Maine Department of Transportation (DOT) Bridges

Bridges built on state and state-aid highways and railroad bridges under the DOT's jurisdiction within the State of Maine, records for which are on file with the DOT. This exception is subject to the following terms and conditions:

- a. That the Submerged Lands be used for state public transportation purposes only.
- b. That at such time as the DOT develops plans for a new transportation project involving a bridge over Submerged Lands, the DOT shall provide the Bureau with a copy of said plans at the same time as said plans are submitted to the Department of Environmental Protection for review and comment. The Bureau shall have 30 days from receipt of such plans to object to the DOT.
- c. Any plan objected to under term and condition b. above shall not be exempted by these Rules until such time as the DOT and the Bureau have resolved such objections to their mutual satisfaction.

5. Harbor Improvement by the Federal Government
6. Moorings
7. Single-Family Residential Water Intake Pipes
8. Those portions of the Submerged Lands which have been filled in prior to October 1, 1975, as defined in 12 MRSA §1865, and subject to the conditions therein.
9. Cables, bridges or other structures which are suspended above the surface of the water at a sufficient height so that they do not interfere with navigation of vessels that would ordinarily use that body of water. This includes cables which comply with Chapter 91 of the Public Utilities Commission rules for safety of overhead utility lines. The base of supporting structures such as towers and abutments are not exempt from the requirement for a lease or easement, but shall be considered water-dependent uses.

### **C. Unauthorized Structures and Uses**

Any structures or uses of Submerged Lands which have not been granted a constructive easement by the legislature or which do not otherwise qualify as an exception herein, shall be considered unauthorized structures or uses unless a lease or easement is granted by the Bureau as provided by these Rules. Unauthorized structures and uses shall include but are not limited to seasonal structures which do not have constructive easement status and which were not required to obtain a lease prior to September 30, 1989. The Director may waive the review procedures for unauthorized structures or uses which have otherwise obtained all other necessary permits.

## 1.6 CONVEYANCES

Conveyances are required to dredge, fill, or erect any structure or for any use not specifically exempted under Section 1.5 of these Rules.

### A. Types

1. Easements may be granted for:

- a. Permanent structures, permanent structures and associated non-permanent structures, or fill that in total area occupy less than 500 square feet of Submerged Lands.
- b. Permanent structures, permanent structures and associated non-permanent structures, or fill that in total area occupy less than 2,000 square feet of Submerged Lands for the exclusive purpose of commercial fishing.
- c. Pipelines, cables and similar linear structures which are less than 500 feet in length and less than one foot in width.

2. Standard Leases may be granted for:

- a. All structures, permanent or non-permanent, or fill, that in total area occupy 500 square feet or more of Submerged Lands.
- b. All structures permanent or non-permanent, that in total area occupy 2,000 square feet or more of Submerged Lands for the exclusive purpose of commercial fishing.
- c. Pipelines, cables and similar linear structures which are 500 feet or more in length and one foot or more in width.

3. Dredging Leases may be granted for:

The removal of any material from Submerged Lands for purposes of navigation, use of the dredged material in another location, sale, or the placement of structures.

4. Constructive Easements have been granted by the Maine Legislature for:

Structures located upon Submerged Lands prior to October 1, 1975. All constructive easements shall terminate by September 30, 2005.

## **B. General Terms and Conditions**

### **1. Right, Title and Interest in Adjacent Upland**

- a. An applicant for a lease or easement must demonstrate sufficient right, title or interest in the upland property adjacent to the littoral zone in which the lease or easement is sought as follows:
  - (1) When the applicant owns the property, a copy of the deed(s) to the property shall be supplied;
  - (2) When an applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration and other terms, as determined by the Bureau, to permit construction and reasonable use of the facility;
  - (3) When the applicant has an option to buy or lease the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Bureau to establish future title or a leasehold of sufficient duration.

This requirement for sufficient right, title, or interest in adjacent shoreland property may be waived if the project is to be constructed in an area which lies outside of a littoral zone as defined in section 1.6.B.11 of these Rules.

This requirement may also be waived for those portions of projects which extend beyond the bounds of an applicant's littoral zone provided the applicant meets the Bureau's requirements for exemptions to littoral zone setbacks as described in section 1.6.B.11 of these Rules.

- b. The interest conveyed by a lease or easement in Submerged Lands may not be severed from the right, title or interest in the adjacent upland. If the holder of a lease or easement for Submerged Lands conveys the right, title or interest in the upland property to another party and does not transfer the Submerged Lands lease or easement to the new upland owner, subject to the approval of the Bureau, or if the holder's right, title or interest in the upland terminates, then the lease or easement shall be invalid and all leasehold or easement interest in the Submerged Lands shall be extinguished.

### **2. Term for Leases and Easements**

- a. A standard lease or easement may be granted for a period of time not to exceed 30 years.

- b. Unless otherwise specified, a dredging lease may be granted for a period of time not to exceed 2 years. In any event, dredging leases shall terminate when any government agency permits for the dredging expire.

### 3. Area Conveyed

- a. The area of Submerged Lands conveyed by easement shall be the area upon or over Submerged Lands occupied by the structure(s).
- b. The area of Submerged Lands conveyed by lease shall be the area upon or over Submerged Lands occupied by the structure(s) and adjacent areas to the extent that the general public may be restricted from exercising public trust rights. Such adjacent areas include but are not limited to space used for berthing or docking vessels.

### 4. Renewal

Lease and easement renewal may be granted at the end of the conveyance term. When renewing a conveyance, the Bureau shall consider all the factors considered in an initial application review under the standards in effect at the time of renewal, as well as any history of noncompliance by the applicant with conveyance terms, these Rules, the Submerged Lands Act, or other applicable law.

### 5. Lease Options

- a. Lease options may be granted only for the purpose of securing an environmental or regulatory permit for the construction of a project or portion thereof. Lease options may be granted at the Bureau's discretion so that an applicant may demonstrate an intent to obtain right, title, or interest in Submerged Lands for the purpose of obtaining an environmental or regulatory permit. Lease options may not be granted for a period exceeding 2 years.
- b. Lease options are subject to the same application, review, and approval process as a lease.
- c. Areas under lease option may be subsequently leased only for those purposes described and approved in the initial application. Any change will require a new application.
- d. At the end of the lease option period, a lease may be issued subject to the terms of the lease option.
- e. Construction of any phase of a project may not begin until a lease has been granted.

6. Constructing a Project in Phases

Leases may be granted for projects which are to be constructed in distinct phases. The areas, rental fees and dates for the phases will be defined in the lease. Application review for such projects will be of the entire project as it will be when completed.

7. Changes in Use or Area Conveyed

A holder of a conveyance may not change the nature of the use, beyond the uses specified in the conveyance, without prior Bureau approval. Significant changes will be considered under the same criteria used to review new applications, and if approved will require an amendment to the conveyance.

A holder of a conveyance may not expand the area of occupied Submerged Lands beyond the area specified in the conveyance. Any change in area will require an amendment and will be considered under the same criteria used to review new applications.

8. Conversion of Easements to Leases

In the event that the purpose or area for which a Submerged Lands easement has been granted is found to be inconsistent with the standards set forth for easements herein, the easement shall terminate. The Bureau may subsequently, at its discretion, enter into a lease with the holder of the easement in accordance with the standards for leases herein.

9. Constructive Easements

- a. All structures under constructive easement shall be registered by December 31, 1995.
- b. All constructive easements shall terminate by September 30, 2005.
- c. A holder of a constructive easement may apply for a lease or easement prior to September 30, 2005. Any such application must include documentation which clearly extinguishes the existing constructive easement before a new lease or easement can be issued. In order to maintain the existing use, the holder of any constructive easements must obtain a lease or easement by October 1, 2005.
- d. Any significant change in the nature of the use of the structure or increase in the area of Submerged Lands occupied by an existing constructive easement shall cause the constructive easement to be extinguished. Continued occupancy and use shall require a lease or easement. Holders of constructive easements must request a determination from the Bureau prior to any change in use or area of Submerged Lands occupied.

- e. When a constructive easement terminates, for any reason, the owner of the structure shall be required to obtain a lease or easement. The Director may waive the review and appeal procedures for such structures, provided that the nature of its use or its size has not changed significantly from what it was at the time that the constructive easement was granted.

## 10. Regulatory Permits

A conveyance from the Bureau for a use requiring permits or approvals from any other state, federal, or municipal agencies shall be conditional upon issuance of and adherence to all applicable permits or approvals.

## 11. Littoral Zones and Setbacks

### a. Determination of an Applicant's Littoral Zone

- (1) The base line of the littoral zone shall be determined by a straight line drawn between the two points at which the applicant's shoreland property line(s) intersect with the normal high-water line. Additional base lines may be included to accommodate irregular shorelines, peninsulas, and islands at the discretion of the Bureau.
- (2) The sidelines of the littoral zone shall be two lines extending towards the water perpendicular to the base line.
- (3) The outer boundary of the littoral zone shall terminate at either the established navigational channel, established anchorage identified as such by the U.S. Department of the Army, Corps of Engineers, the midline between opposing shorelines, or 1,000 feet, whichever is less.
- (4) When two or more littoral zones overlap, the Bureau may require a letter of no objection from any shoreland owner into whose littoral zone the proposed project extends.

### b. Determination of Setback Lines

- (1) When littoral zones are contiguous, structures must be set back 25 feet from the applicant's littoral sidelines.
- (2) When littoral zones are overlapping, structures must be set back 25 feet from the applicant's littoral sidelines.



- (3) When littoral zones diverge, the setback line shall be a line which bisects the angle formed by the two diverging sidelines. Structures must be at least 25 feet from the setback line.
- (4) Regardless of the configuration of littoral zones, any new structure which may be used for docking or berthing of boats, must be at least 50 feet from any other existing structures unless it is designed to be used in conjunction with that existing structure.
- (5) The Bureau may grant exemptions to these setback requirements if the Bureau determines that such exemptions will otherwise meet the terms, conditions, and standards of these Rules and the applicant has demonstrated that no reasonable alternative location is available.

c. Exemptions to Setbacks

In making the decision to grant an exemption to littoral zone setbacks or setbacks from existing structures, the Bureau may require written notice of no objection from other persons whose ingress and egress or whose future ability to construct a wharf may be adversely affected by the proposed project. The nature and format of the letter of no objection shall be prescribed by the Bureau.

12. Buffer Zone

A buffer zone of not more than 30 feet in width around a permanent structure located on Submerged Lands may be leased, provided it is necessary to preserve the integrity and safety of the structure or its uses.

13. Docking Areas

- a. Leases for piers, wharves and floats and other similar structures shall include designated areas – independent of slip space – to account for the temporary or periodic docking of vessels adjacent to these structures. These areas shall not be included in determining whether a lease or easement is required, but shall be factored into the computation of fees.
- b. A minimum 10-foot wide strip shall be included adjacent to floats and to other structures that involve temporary or periodic docking of vessels.
- c. The Bureau may grant larger docking areas than those stipulated under b. above to accommodate the size and number of vessels likely to be docked.

#### 14. Transfers or Assignment

- a. Leases are transferable or assignable only with the Bureau's prior written approval.
- b. At the time of transfer or assignment, the lease shall be revised in accordance with the Rules and Submerged Lands Laws in effect at that time.
- c. No lease transfer or assignment will be approved until:
  - (1) All uncollected fees for past use are paid in full;
  - (2) Interest on uncollected fees is paid at a rate equal to the highest conventional rate of interest charged for commercial unsecured loans by Maine banking institutions as determined by the State Treasurer;
  - (3) All conditions of the conveyance have been met; and
  - (4) The transferee or assignee has demonstrated sufficient right, title and interest in the adjacent upland when the area to be conveyed is contiguous with the upland, subject to the requirements of section 1.6.B.1. of these Rules.
- d. Easements may be transferred or assigned, but easement holders shall notify the Bureau of the name and address of the new easement holder and pay any outstanding registration fees and otherwise bring the premises into full compliance with the easement terms prior to transfer or assignment.

#### 15. Subleasing

A lease or any portion thereof, may be subleased for the purpose of providing berthing space for a vessel or other uses designated in the lease. No sublease or any portion thereof may be further subleased or transferred except for a transfer to heirs upon death of the sublease holder or a transfer to the original leaseholder. The term of a sublease may not exceed that of the lease.

#### 16. Termination

- a. A conveyance may be terminated by the Bureau when:
  - (1) It is required to do so in order to comply with an act of the Legislature; or
  - (2) The conveyee defaults under the terms and conditions of the lease or easement or otherwise fails to comply with these Rules or other applicable laws.

b. The procedure to be used in terminating a lease or easement under subparagraph 2 above shall be as follows:

- (1) Lessee or Easement holder will be notified of any violation of the terms of the conveyance and shall be informed in writing of the corrective action required. Lessee or easement holder will be given a specific date by which corrective action must be taken.
- (2) If corrective action required by the Bureau is not completed upon the date specified by the Bureau, Lessee or Easement holder will be informed in writing that the lease or easement will terminate as provided in the notice and the Bureau may demand that any structures or portions thereof on Submerged Lands be removed within 90 days.
- (3) If, at the end of the aforementioned 90 day period, structures are not removed as required by the Bureau, the Bureau may request that the Maine Department of the Attorney General proceed with legal action for removal of structures and recovery of any unpaid rental fees.
- (4) Under extenuating circumstances, as determined by the Director, the Bureau may extend the amount of time available to the conveyee for complying with one or more of the requirements under this section.

#### 17. Improvements

Upon the expiration, cancellation or termination of a conveyance, regardless of the reason therefore, the conveyee shall have 90 days to remove its property. The Bureau at its discretion shall become the owner of all improvements and structures erected upon the conveyed premises not so removed. The Bureau may require as a term of the conveyance that the conveyee will remove all such improvements and structures at conveyee's expense and restore the premises to the condition in which they existed prior to construction of any improvements upon Submerged Lands.

#### 18. Public Compensation

The Bureau may require that public walkways, boat launching ramps, parking space, other facilities or other mitigation measures shall be provided by the conveyee to compensate the public for the loss of customary or traditional public access ways to, public trust rights in, on or over Submerged Lands or ingress and egress to riparian owners. Determination of appropriate public compensation will be made in consultation with municipal officials and other agencies having jurisdiction or an interest in the project area.

## 19. Upland Uses and Fill

Leases or easements for upland use or filling of Submerged Lands will not be granted unless they are for an essential but subsidiary part of a commercial fishing use, water-dependent use, shoreland stabilization, cable, or pipeline and the applicant has demonstrated that there is no other reasonable alternative site available. The Bureau may require the following:

- a. A map prepared and signed by a registered land surveyor showing the location and boundary of the proposed site; and
- b. Monumentation of the Submerged Lands boundary adjacent to the fill; and
- c. That fill materials be removed from the Submerged Lands at the termination of the conveyance; and
- d. That the leased area be restored to the conditions which existed prior to the placement of fill.

## 20. Determination of Mean Low and Natural Low Water Marks

In coastal areas and tidal rivers “the mean low-water mark” can be approximated by observing the location of the water’s edge at the time of a 0.00-foot low tide as indicated on a tide chart, based on current information from the National Oceanic and Atmospheric Administration (NOAA) and adjusted for that location. Where there is uncertainty regarding the true location of the mean low-water line mark, the Director may require an applicant to establish the true mean low-water mark through a survey conducted by a qualified land surveyor and referenced to a National Geodetic Vertical Datum as established by NOAA.

For great ponds that are not impounded, the “natural low-water mark” shall be the average low-water mark as observed during the time of year when water levels are ordinarily at their lowest due to natural conditions. Whenever possible, this mark shall represent the average low-water mark as observed or estimated over a period of 5 years or more. For great ponds that are impounded, the natural low-water mark is the estimated low-water mark of the lake in an unimpounded state. This mark may be approximated by consulting information, including but not limited to, archeological and historical data, calculations of dam heights and draw-down capacities, and other relevant facts. The applicant shall have the responsibility of providing information on the location of the natural low-water mark relative to the proposed structure. In cases in which the Bureau disagrees with estimated location of the natural low-water mark, the Bureau may require that the applicant establish the natural low-water mark through a survey conducted by a qualified land surveyor.

21. Detached Floats and Other Structures

- a. In determining the total area of permanent and non-permanent structures on or over Submerged Lands, the Bureau will generally combine the area of structures that are not attached but which are proximate to and associated with each other.
- b. The area of detached floats shall generally be combined, unless they are located more than 50 feet from each other.

22. Construction Deadline

Structures for which a lease or easement has been issued shall be placed on the conveyed premises within two (2) years of the issuance of the lease or easement. Failure to install the structures within this time frame will be grounds for termination of the conveyance in accordance with the termination provisions of Section 1.6, B.16. above.

23. Abandoned, Deteriorated or Damaged Structures

Once installed on Submerged Lands, structures shall be used and maintained for their intended purpose. Structures that have deteriorated beyond reuse, or have been unused for extended periods of time may be considered abandoned by the Bureau. Upon determining that the conveyed premises or a portion thereof have been abandoned, the Bureau at its option may terminate the conveyance covering the entire premises, or the portion that has been abandoned, in accordance with the termination provisions of Section 1.6, B.16. above. Structures that have been damaged shall not be deemed abandoned if they are repaired to their original condition and dimensions within two (2) years of the date of damage.

## **1.7 APPLICATION REVIEW PROCEDURES AND STANDARDS**

The Bureau shall process all conveyance applications under the process defined herein.

### **A. Application**

1. Requests for Submerged Lands conveyances may be made in writing to the Bureau. Upon receipt of a request for conveyance, the Bureau will send the applicant a Submerged Lands Application for a conveyance. Preliminary application for a conveyance will be deemed to have been made when the Bureau receives any of the following:
  - a. An application for lease or easement of Submerged Lands;
  - b. An application for a wetlands alteration permit, or equivalent application from the Department of Environmental Protection;
  - c. An application for a building, development, great ponds, or equivalent application from the Land Use Regulation Commission;
  - d. Any similar application from an agency with appropriate jurisdiction.
2. Upon receipt of any of the above listed applications, the Bureau will notify the appropriate agency and the applicant of the need for a Submerged Lands lease or easement. If the proposed project is not on Submerged Lands or is otherwise exempt, the Bureau will notify the agency or, in case of direct application to the Bureau, the applicant that the Bureau does not have jurisdiction over the project.
3. If the Bureau determines that a lease or easement is required, the applicant will be requested to forward the appropriate fees, and when necessary, proof of sufficient right, title or interest in the adjacent upland, a description of the proposed project, a detailed site plan and any additional information the Bureau may require for review of the lease or easement application. If publication of a public notice is not otherwise required of the applicant, the Bureau may require the applicant to publish such notice in a format to be provided by the Bureau. Application for a conveyance will be deemed complete when the Bureau has received the appropriate administrative fee and any additional information requested.
4. If the application is determined to be incomplete or if at any time the Bureau finds that additional information is needed to supplement the application, the applicant will be notified of what additional information needs to be submitted in order for the Bureau to make a decision. If this information is not received within 90 days from the date it is requested, the Bureau may require the applicant to reapply for the proposed lease or easement.

## **B. Actions Taken by the Bureau**

1. The Bureau shall review all completed applications and issue Preliminary Findings within 60 working days of receipt of a completed application subject to extension in cases where the matter is more complex and additional information or studies are requested by the Bureau, or the Bureau otherwise requires more time. The Bureau may request additional information from the applicant, government agencies, or other parties when necessary to complete its review and make a decision.
2. The Bureau will notify interested parties of the receipt of a completed application. As determined by the Bureau on a case-by-case basis, interested parties may include, but are not limited to, abutting landowners, landowners with overlapping littoral zones, local municipal officials, including town selectmen, planning boards, and harbor masters, local commercial fishermen or others engaged in commercial marine activities, and others who have notified the Bureau of their interest in a particular project. The Bureau will also seek expert advice regarding potential impacts from State and Federal agencies including but not limited to the Department of Marine Resources, the Department of Environmental Protection, the State Planning Office, the Department of Transportation, and the U.S. Department of the Army, Corps of Engineers. There shall be a 30 day period during which any party may provide comments pertaining to the application. The Bureau will specify the date by which comments are due. A request by a town or other interested party for extension of this date may be allowed if sufficient need for such an extension is demonstrated.
3. If the Bureau determines that a letter of no objection is required from one or more littoral abutters, the Bureau will send such notice to the abutters and the applicant. The letter of no objection will be in a format provided by the Bureau.
4. The Bureau or its designee may conduct inspections of the proposed project site in order to assess on-site conditions, the characteristics and uses of adjacent lands, waters and structures, and potential public trust impacts.
5. After the initial 30-day review period, if the Bureau determines that it is appropriate, additional information may be requested from the applicant or other interested parties or a public informational meeting may be scheduled in order to allow the general public to provide additional information for consideration.
6. Once all requested information is received and any public meetings have been concluded, the Bureau will issue Preliminary Findings. Preliminary Findings and Conclusions shall be sent to the applicant, all parties who provided comments during the initial review period, and other interested parties.

7. Within 30 days of the issuance of Preliminary Findings any party may petition the Director to reconsider such Findings by written request. The Director may waive the reconsideration period if no comments are received during the initial review period, or if the comments that are received are determined to not be related to public trust considerations or any of the other requirements of these Rules, and the Bureau concludes that a lease or easement will be issued.
8. After the reconsideration period has ended, the Bureau shall review all petitions for reconsideration and related information and issue Final Findings and Conclusions. If the Conclusion is to approve the application, 2 original copies of the lease or easement will be sent to the applicant for signature.
9. Failure of the applicant to return the signed lease or to pay applicable rental or registration fees within 90 days of the issuance of the Final Findings and Conclusions may constitute grounds for reconsideration or rescission of the lease or easement.
10. Materially incorrect information submitted in conjunction with an application for a Submerged Lands conveyance shall constitute grounds for reconsideration of or rescinding of any Findings, Conclusions, or Conveyances issued by the Bureau.
11. The Director may waive the review procedures or reduce the length of the initial or reconsideration review periods, and proceed directly to issuing Findings and Conclusions for any application if, in the opinion of the Director, one or more of the following conditions apply:
  - a. A genuine emergency exists and prompt approval of the project is essential to protect lives, homes, or structures which are essential to a person's livelihood; or
  - b. The project proposes to replace an existing similar project on an area already leased for that purpose or for which an easement or constructive easement exists; or
  - c. The project represents a minor addition or change to an existing lease or easement and will not significantly increase the impact of the existing project.
  - d. The project constitutes a non-permanent, temporary structure, and letters of non-objection are provided by the municipality, the town, abutters and the Department of Marine Resources.



## C. Standards

The Bureau may grant a conveyance upon receipt of a completed application and upon such terms and conditions as it deems necessary to fulfill the purposes of these Rules, the public interest, and other applicable laws. The Bureau may grant a conveyance when it finds that the applicant has demonstrated that the proposed use of Submerged Lands meets the following standards.

1. The use will not be inconsistent with these Rules.
2. The use will not unreasonably interfere with customary or traditional public access ways to, or public trust rights in, on or over Submerged Lands and the waters above those lands.
3. The use will not unreasonably interfere with navigation, fishing or existing marine uses of the area, unreasonably diminish the availability of services and facilities necessary for commercial marine activities, or unreasonably interfere with ingress and egress of riparian owners.
4. For consideration of impacts upon commercial fishing industries or infrastructure, the following guidelines shall apply:
  - a. The use will not result in the loss or unreasonable diminishment of opportunity to economically pursue commercial fishing for the operators of any commercial fishing vessels that will be displaced.
  - b. The use will not result in a loss of access or unreasonable diminishment of access to existing commercial fishing grounds.
  - c. The use will not result in a loss or unreasonable reduction of repair and maintenance services essential for commercial fishing operations.
  - d. The use will not result in a loss of fish buying, processing, or handling facilities that are in operation at the time of the application.
  - e. The use will not result in a loss or unreasonable diminishment of access to existing commercial fishing facilities.
5. For proposals involving the installation of underwater cables on Submerged Lands, the following guidelines apply:
  - a. New cable crossings shall generally not be permitted between two mainland areas when routing over land is possible;
  - b. New cable crossings shall generally not be permitted to islands already served by cables that provide the needed utility service.

The Director may grant an exception to this guideline in cases in which the applicant demonstrates that an additional cable is necessary to provide back-up service, or is otherwise in the public interest, or that no reasonable alternatives exist for providing service to additional customers.

- c. In approving new cable crossings, the Bureau may require a condition that the cable owner agree to grant a right-of-way over upland property to adjacent landowners in the event that they request a connection to utility service.
  - d. In the routing of cables, the following areas shall be avoided to the greatest possible extent:
    - (1) areas where commercial dragging for scallops, urchins or other marketable sea organisms periodically occurs, or
    - (2) areas where anchoring or mooring of commercial and noncommercial vessels frequently occurs.
  - e. In instances where avoiding the areas described in d. above is not possible, burial of cables shall be required unless the applicant demonstrates that burial is not feasible due to bottom conditions or other factors.
  - f. Whenever possible, cables shall be located within existing cable areas as mapped on NOAA charts, or, if no mapped cable area exists, near existing cable routes – unless such siting is determined to have more interference with public trust rights than an alternative routing.
  - g. In coastal areas cables shall be sited with Global Positioning Systems (GPS) so that the location of installed cables can be accurately determined and so that the width of cable areas can be minimized in accordance with NOAA charting procedures. In other areas, siting of cables using GPS shall generally be required, unless the applicant demonstrates that cables can be accurately located and mapped in another manner.
  - h. Within one year of the termination of use, unburied cables shall be removed from Submerged Lands, unless this requirement is waived by the Director. If cables are allowed to be left in place, the owner shall be required to maintain a valid Submerged Lands conveyance from the Bureau and pay the applicable lease or easement fees.
5. The use will not result in significantly increased risk to life or property in the vicinity of the use under conditions of weather and vessel traffic that are likely to be encountered.
6. The use will comply with requirements imposed by state, federal or municipal agencies with jurisdiction over the area of the proposed project.

7. The use will not conflict with established management guidelines designed to protect marine habitats or other areas of Submerged Lands which have been designated for special protection status by an agency authorized to make such designations.
8. The use does not conflict with those aspects of the Coastal Policies or the Coastal Policy guidelines, 38 MRS §1801, which relate to the criteria considered by the Bureau as outlined in these Rules.
9. The use is not otherwise determined to be contrary to the public interest.
10. A conveyance may not be granted, transferred, or renewed until all outstanding fees have been paid in full plus interest and all conditions of the conveyance have been met. The interest rate shall be equal to the highest conventional rate of interest charged for commercial unsecured loans by Maine banking institutions as determined by the Treasurer of State.

It shall be the responsibility of the applicant to demonstrate, to the satisfaction of the Bureau, that the proposed use will comply with these standards.

## **1.8 FEES**

Fees are required for the processing of conveyance applications and for private uses of Submerged Lands granted through conveyances.

### **A. Easements**

1. Application Processing - \$100.00 (effective 9/13/03)  
For projects begun prior to application- \$200.00 (effective 9/13/03)
2. Registration - \$50.00 every 5 years
3. Registration fee is payable upon execution of the easement and on or before December 31 every 5th year thereafter.

### **B. Standard Leases**

1. Application Processing: \$100.00  
For projects begun prior to application- \$200.00 (effective 9/13/03)
2. Annual Rental
  - a. Rental fees for Submerged Lands leases are set by the Legislature and are subject to change by action of the Legislature. The Bureau shall charge rental fees in accordance with the Submerged Lands Act, as from time to time amended. Fees for certain uses which are not specified by law, such as dredging, pipelines, and cables

are specified herein. The Legislature has defined two categories of methods for determining the annual rental fees for leased Submerged Lands:

- (1) The annual rental fee for permanent structures greater than one foot in width, non-permanent structures greater than 500 square feet in area, buffer zones, loading, service and repair areas, and private berthing or docking space that is not rented or otherwise made available to other parties for a fee is based on a percentage of the value of the adjacent upland. The Submerged Lands Act provides the guidelines and formulas to be used in determining annual rental fees which are based on a percentage of upland value.
  - (2) The annual rental fee for slip space that is rented or otherwise made available for private use for a fee is based upon a percentage of the gross income of the Lessee. Examples of this kind of slip space include berthing space at marinas, dockominiums, boat clubs, and similar facilities and berthing space that is rented by the pier owner to a commercial vessel for a fee. The Submerged Lands Act provides the specific formulas to be used in determining annual rental fees which are based on a percentage of gross income. In order to determine annual fees, gross income must be reported to the Bureau annually on a form provided by the Bureau. Information sent to the Bureau on gross income is subject to verification by independent audit, which may be requested at the discretion of the Director.
- b. When the Bureau determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of Submerged Lands, the Bureau may:
- (1) make adjustments in the municipally assessed value so that it more closely reflects the values of comparable waterfront properties in the vicinity; and
  - (2) require the applicant to provide an appraisal of the Submerged Lands. The appraisal must be approved by the Bureau.
- c. Cables and Pipelines of less than one foot in width: \$0.02 per linear foot.
- d. Minimum Rental Rate: If the rental rate is determined to be less than \$0.01 per square foot, it shall be rounded off to \$0.01 per square foot.
- e. Minimum Annual Rental Fee: \$150.00
- f. Rental fees are payable on or before each February 1 and on an annual basis thereafter. The rental fee due at the time of execution of a new lease shall be a portion of the total annual rental fee prorated over the remainder of the year.
- g. Any lease fee which is more than thirty days past due shall be subject to a processing charge of \$10.00 and interest on the amount due equal to the highest rate of interest charged for commercial unsecured loans by Maine banking institutions, as determined by the Treasurer of State.

3. Lease Options
  - a. Application Processing: \$100.00 for the initial application.
  - b. Administrative Fee: \$100.00 for the second year.
4. Rents for leased areas other than slip space which were in existence prior to August 1, 1989, shall be revalued to the full fair market rental rate as defined under Section 1.8.B. of these Rules. Rents shall be incrementally adjusted annually until full fair market rental rate is reached in the year 2000.
5. Rental rates may be revised as follows:
  - a. As a result of any revision of these Rules, the Submerged Lands Act, or other applicable laws.
  - b. For slip space, rates are revised annually to reflect changes in gross income.
  - c. For areas other than slip space, no adjustment may be made within the first 5 years of the lease. Thereafter, the Bureau will conduct a periodic reevaluation of all non-slip space rental fees once every 5 years by contacting local municipal officials to determine the current valuation of adjacent upland property and making other adjustments and equalizations as necessary.

### **C. Dredging Lease**

1. Application Processing: \$100.00  
For projects begun prior to application- \$200.00 (effective 9/13/03)
2. Public Navigational Projects: There is no fee required for projects conducted by public agencies for a public purpose.
3. Private or Commercial Navigational Projects
  - a. Less than 1,000 cubic yards: \$100.00
  - b. 1,000 to less than 5,000 cubic yards: \$250.00
  - c. 5,000 to less than 10,000 cubic yards: \$500.00
  - d. 10,000 or more cubic yards: \$1,000.00
4. Materials removed for profit or use in another location: Fair market value to be determined by the Bureau.

5. Material removed for the placement of structures.
  - a. Private or Commercial: Same schedule under 3 above.
  - b. Public Purposes: There is no fee required for projects conducted by public agencies for a public purpose.
6. Fees are payable upon execution of lease.

**D. Constructive Easements**

1. Administrative Processing: \$100.00 (effective 9/13/03)
2. Registration Fee: \$50.00 every 5 years.
3. Registration fee is payable upon execution and on or before December 31 every 5th year thereafter.

**E. Lease Transfers, Assignments, and Amendments**

Administrative Processing: \$100.00.

There shall be no charge for minor amendments, as determined by the Bureau, that do not involve changes in the size of the leased area or substantive changes to the provisions of the lease.

**F. Billing Procedure and Cancellation of Leases for Unpaid Rent**

The following billing procedure will be used:

1. The Bureau will send the annual rental bill 30 days before due date.
2. If not paid by due date, the Bureau will notify lessee of overdue rent by letter.
3. After the due date, and whatever period the Bureau provides for corrective action, the Bureau will notify lessee that lease has been canceled and demand removal of any structures within 90 days.
4. If the structures are not removed as directed by the Bureau, the Bureau may turn the matter over to the Department of the Attorney General for appropriate legal action.

**G. Exemptions**

Although required to obtain a lease or easement, the following uses shall be exempt from the requirement to pay an annual rental or registration fee. If any of these criteria should cease to be

met at any time during the operation or maintenance of the facility, then the exemption from the requirement to pay fees shall also cease, and the Lessee or Grantee shall be required to pay the applicable fee to the Bureau consistent with these Rules or other rules or laws then in effect.

1. Structures used by municipal or quasi-municipal entities in providing utility services.
2. Port facilities that:
  - a. Provide significant public benefits to the people of Maine, to offset the loss of the Submerged Lands occupied by the structure; and
  - b. Are an essential component of the State's marine waterway infrastructure, as determined by the Department of Transportation and approved by the Bureau; and are owned and controlled by a public entity which is publicly accountable for the business transacted at the facility, even though that business may be conducted by a privately owned and operated company under contract to the owner; and
  - c. Are sited and operated in a manner consistent with Maine's Coastal Management Policies.
3. Facilities, or portions of facilities, which are publicly owned or owned by nonprofit organizations that offer public use for free or with nominal user fees. Public uses include but are not limited to, municipal facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves, swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for maintenance of the facility.
4. Facilities, or portions of facilities owned by entities other than public or nonprofit organizations which are used only to provide free public access.
5. Other structures owned by municipal, state or federal governmental entities that are used to provide essential public services or enhance public trust values, including national defense, maritime safety and environmental protection.

## **1.9 COMPLIANCE AND ENFORCEMENT**

A project which has received a conveyance from the Bureau, may be visited by the Bureau or its designees to determine if the project has been constructed in accordance with the terms and conditions of the conveyance. Designees of the Bureau may include staff of the Department of Environmental Protection, the Land Use Regulation Commission, or other agencies. If the Bureau determines that the project is not in compliance with the terms and conditions of the conveyance the lessee or easement holder will be notified in writing of specific violations and what must be done to bring the project into compliance. In general, the lessee will be given 60 days to correct the violations, although this period may be lengthened or shortened if deemed necessary by the Director. If a lessee or easement holder fails to correct a violation within the time specified by the Bureau, termination procedures, as outlined in Section 1.6.B.15 of these Rules, will begin. Violation of these Rules is a Class E crime [12 MRSA §1803(6)].

## **1.10 CONFLICTS WITH OTHER RULES OR STATUTES**

Whenever a provision of these Rules conflicts with or is inconsistent with another provision of these Rules or of any other ordinance, regulation, rules, or statute, the more restrictive provision shall control.

## **1.11 EFFECTIVE DATE**

These Rules were originally adopted on January 15, 1992, and revised on May 28, 2000.

**NOTE:** Administrative fees amended September 13, 2003 pursuant to Title 12 MRSA § 1862.