

Operational Land Use Policy for Aquaculture – Regional Delegation document

Background: The Operational Land Use Policy for Aquaculture references a number of decision points assigned to the Authorizing Agency Director. This level of delegation is not appropriate in all cases. The following table presents an analysis of each reference and the approved delegation as of November 2017.

Operational Land use Policy – Aquaculture section	Policy reference	Land Act Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
Section 6.1 Temporary Licence	“Temporary licences are not usually issued for aquaculture. At the discretion of the Authorizing Agency Director , where the particulars of the situation warrant it a temporary licence may be issued to allow for the investigation of project feasibility or the placement of monitoring equipment.”	Section 11 of the <i>Land Act</i> Minister may dispose of Crown land S11 (1) “...the minister may dispose of surveyed or unsurveyed Crown land by any of the following means...(2) (d) grant a licence to occupy Crown land.” This section is delegated to Land Officers, PAs, and those positions above.	Section Head Temporary licences are for non-commercial purposes. There are rare occasions where an aquaculture proposal would be non-commercial in nature; these may include: educational, experimental, or accommodation reasons. In those special cases where this may be an appropriate option, No other policy, including the Form of Crown Land Allocation policy, appears to reference a specific decision making level.
Section 8 – Allocation processes	“Where a coastal resource planning process or an Economic Measures negotiation is actively in progress, the Authorizing Agency Director may designate specific areas of the coast where aquaculture applications will be accepted but will be parked until the associated planning process or negotiations are concluded in a timely manner.”	No direct equivalent, however, a decision under S16 – Withdrawal from disposition or S17 – Conditional withdrawal is delegated to Director of Authorizations.	Director of Authorizations The correct method of implementing a ‘hold’ approach would be a Land Act Reserve (i.e. S16 or S17), which is currently delegated to the Director of Authorizations. Recommendation is to remain consistent with that delegation.

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
8.1.1 Application Package A. Parcel and siting considerations – Siting criteria for aquaculture tenure	“The Authorizing Agency Director , at the request of the PRT and in consultation with relevant regulatory agencies, has the discretion to modify general siting criteria or establish additional density and separation requirements where appropriate.”	No equivalent.	Director of Authorizations AGRI is responsible for strategic aquaculture policy, and Land Tenures Branch implements that strategic policy via the Operational Land Use Policy – Aquaculture. <u>Modifying</u> specific siting considerations is a change in policy. Recommendation is to maintain delegation to the Director; this does not preclude the Decision Maker’s authority to apply specific siting-related conditions to a decision, should factors of the application warrant those conditions.
8.1.1 Application Package A. Parcel and siting considerations – Parcels for tenure expansions	“A parcel must not be capable of being a stand-alone site to be considered for expansion...The characteristics that make a site “standalone” will depend on the species cultured as economic factors and biophysical requirements vary among species. The determination of a site’s ability to be “standalone” will rest with the Authorizing Agency Director .”	No equivalent	Senior Land Officer Unlike other <i>Land Act</i> program areas where full application fees are required for tenure expansion, tenure expansion of aquaculture tenures are charged at 50% of application fees (<u><i>Land Act</i> Fee Regulation</u> section 3(a) & (b)). In practice, DFO prefers that expansion parcels that are not immediately adjacent to an existing tenure should receive a new Crown land file number. This is related to water quality monitoring: if a tenure has more than one parcel, and only one parcel is subject to a closure, the whole tenure will be closed. Expansion areas are subject to all ‘new’ application procedures.

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
8.1.1 Application Package B. Management Plan & Incidental Use	<p>“All aquaculture tenure applications require a tenure Management Plan. The approved tenure Management Plan is referenced in the tenure document and forms part of the tenure agreement. An application for a tenure modification to amend the approved tenure Management Plan is required:</p> <ul style="list-style-type: none"> • to change the authorized use of the approved tenure; • to expand or reduce the size of an approved tenure boundary; or • upon request from the Director of Authorization.” <p><u>“Trigger for submission of a tenure amendment application:</u> The tenure-holder must apply for a tenure modification when:...</p> <ul style="list-style-type: none"> the tenure boundary by more than 30%; • requested by the Director of Authorization when the proposed changes to improvements do not meet the spirit and intent of the definition or conditions for an IAU; or ... 	No direct equivalent, however, Section 59 Trespass is delegated to land officer, Sr PA	<p>Senior Land Officer</p> <p>The policy allows for small changes to be made to a management plan without triggering an application. If the proposal does not ‘meet the spirit and intent of incidental aquaculture use’ an amendment must be submitted. The policy is clear regarding the conditions required. Current process when reviewing an IU notification, is for the land officer to notify PRT if it is not consistent with IU, and communicate with the client.</p>

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
8.1.5 Referrals	Fisheries and Oceans Canada may respond by informing applicants and the province that a review under Canadian Environmental Assessment Act or Navigable Waters Protection Act is underway. The Authorizing Agency Director may choose to park the application until the federal environmental review is completed.	No equivalent reference	Land Officer The Provincial 'On-Hold' procedures allow for a land officer to place an application on hold pending the outcome of a federal review.
8.1.7 Advertising/Notification	<p>“At the discretion of the Authorizing Agency Director applicants may also be required to seek public input through open houses, local advisory committees, including stakeholders on Project Review Teams, etc.</p> <p>All new finfish applications will require public consultation which will most often be conducted via an open house session in a local community near the area under application. Where possible, the Authorizing Agency will coordinate the holding of such an open house with DFO.”</p>	<p>No equivalent reference</p> <p>The <i>Land Act</i> requires public posting:</p> <p>33 (1) If the minister considers it advisable in the public interest, the minister may require the applicant to publish a notice of his or her application.</p>	<p>Manager, Authorizations</p> <p>Open houses are specified for finfish so no delegation is required for finfish applications.</p> <p>Open houses for shellfish are rare, but do arise when there are proposals that are out of the ordinary. Since it is unusual to require an open house for shellfish, and it should only be undertaken in cases where there is a clear need, it is recommended to delegate this decision to the Manager, Authorizations.</p>

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
8.1.7 Advertising/Notification A. Additional Notification Requirements for Shellfish Tenure	“The Authorizing Agency Director may, at his or her discretion, reduce or revise the area under application in consultation with the proponent and the neighbouring tenure holder.”	No equivalent reference, however, Section 38 (lease) and 30 (licence of occupation) are delegated to land officers and Sr PA. Section 39 states: “The minister may issue a licence to occupy and use Crown land, called a "licence of occupation", subject to the terms and reservations the minister considers advisable.”	Land Officer, Natural Resource Specialist This section does not speak to a decision on the application but working with affected parties to identify a workable application area. The land officer has the responsibility to resolve the conflicts that arise during the application review; this includes adjusting the application area.
8.2 Competitive Process	“In the case where competing aquaculture applications are determined by the above process to be of relatively equal merit, the Authorizing Agency Director may direct that the applicants be invited to make bonus-bid offers for the site in question. The applicant who does not have his or her bid accepted will then be offered the option of being first in queue after the accepted application as per Section 8.1.2.	No equivalent reference.	Section Head Any use of the Competitive Process should be consistent with Land Procedure: Allocation Procedures - Competitive Process. The process is well defined, similar to a contract process. The process would be well managed by the Senior Land Officer. Some aspects of the process may trigger review or approval by an Expense Authority; those decision points are not referenced in the operational policy for aquaculture.

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
8.2 Competitive Process	“If competing applications over the same parcel are for different uses (e.g. aquaculture and log handling), disposition will be on the basis of best use of the land as determined by the Authorizing Agency Director in consultation with other appropriate agencies.”	No equivalent reference, however, Section 38 (lease) and 30 (licence of occupation) are delegated to land officers and Sr PA. Section 39 states: “The minister may issue a licence to occupy and use Crown land, called a "licence of occupation", subject to the terms and reservations the minister considers advisable.”	Manager, Authorizations Where a decision is to be made between an aquaculture use and a non-aquaculture use, the decision is best made by the Manager, Authorizations who has a broader view of highest and best land use.
8.2.1 Bonus Bid Process	“The Authorizing Agency Director may decide to utilize a closed bonus-bid process in cases where aquaculture tenures have reverted to the Crown or where two or more competing applications are deemed tied after evaluation against the criteria as outlined above. The following special procedures apply for holding a bonus-bid competitive process or	No equivalent reference.	Director of Authorizations Using the closed bonus-bid process ‘in cases where aquaculture tenures have reverted to the Crown’ is not consistent with FLNRORD’s current principles for disposition and contract awarding. Recommendation to leave the delegation at its current level as use of this section should be undertaken carefully.

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
	<p>auction:</p> <ul style="list-style-type: none"> • a site previously used for a particular aquaculture purpose will normally first be auctioned for the same purpose unless the Authorizing Agency Director, determines that another form of aquaculture constitutes better use; • a closed-bid auction will be held within 12 months of the parcel(s) becoming vacant to ensure that production is not interrupted for overly long periods; • the Authorizing Agency Director will ensure that procedures for disposition of sites by public competition are consistent from the aspect of administrative fairness. The same requirements as those expected of an applicant making direct application would apply to the public disposition process including advertising, local zoning and availability of upland owner's consent; parcel(s) for public auction regarding site suitability and production capability. Local governments, other government agencies and interest groups may be consulted as appropriate; • where several areas are proposed for 		

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
	marketing, the Authorizing Agency Director may advertise the areas at a single auction; <ul style="list-style-type: none"> • in developing the minimum requirements for bids, the Authorizing Agency Director may utilize some or all of the criteria identified in Section 8.2. The Authorizing Agency will communicate these added requirements to all potential applicants; and • the successful applicant(s) will be required to submit a management plan which will be reviewed by the Authorizing Agency and, as appropriate, local governments, First Nations, government agencies and interest groups.” 		
9.3.1 Assignment	“The Authorizing Agency Director may waive the requirement of satisfactory development and production of the site if the following applies...”	No equivalent reference. Section 99, Assignment of disposition is delegated to Portfolio Administrators	Section Head The purpose of this section of the policy is to discourage parties from applying for tenure and then ‘flipping’ the tenure later. There are other good reasons why an assignment may be considered when there has not been diligent use (e.g. the assignee intends on diligently using the site); the situation is best assessed by aquaculture program staff.

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	Land Act Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
9.3.2 Sub-Tenuring	"The Authorizing Agency Director will consider requests for sub-tenuring on a case by case basis."	No equivalent reference.	Senior Land Officer This statement should be disregarded as it is redundant – any request for sub-tenure would be considered on its own merits (i.e. case-by-case). Current process is for a land officer to review a request, and the Section Head signs off the consent to sub-tenure. Recommendation is for the Senior land officer to have the delegated authority for this rare and low-risk decision.
9.5.2 Site Decommission/Clean-up Procedures	"The province holds performance guarantees on all tenures. A performance guarantee will not be released until the Authorizing Agency Director is satisfied that the work has been completed to the satisfaction of the provincial and federal agencies."	S43 Cancellation of disposition is delegated to Senior land officer, Senior PA	Senior land officer (shellfish) Section Head (finfish) Review of clean up (including ROV, photos, etc) is currently conducted by land officers. Decommissioning procedures are drafted and will be finalized soon. Recommendation is that the decision is delegated to the Senior Land Officer; in practice the senior land officer would be responsible for sign-off of shellfish cancellations, and the section head for final sign-off of finfish cancellations.

Operational Land Use Policy for Aquaculture – Regional Delegation document

Operational Land use Policy – Aquaculture section	Policy reference	<i>Land Act</i> Delegation Matrix *Note: lowest delegation is listed.	Aquaculture policy delegation* & Rationale *Note: lowest delegation is listed; delegations include positions at and above the recommended delegation level.
9.5.3 Diligent Use	<p>“All aquaculturalists who have acquired a new tenure must demonstrate that work has started on the site within 12 months of being in receipt of all required licences and permits (unless the Authorizing Agency Director recognizes extenuating circumstances).</p> <p>To be considered as diligent use the site is to be in compliance with the management plan within five years of issuance of the initial tenure (unless the Authorizing Agency Director recognizes extenuating circumstances).</p> <p>...</p> <p>Any aquaculturalist not making diligent use of their tenure will be sent a registered letter explaining the requirement and requesting that an explanation be provided within 30 days. If a reasonable explanation is not forthcoming, a second registered letter will be sent to the aquaculturalist indicating that unless a reasonable explanation is received within 30 days of the date of the letter the tenure may be cancelled. The Authorizing Agency Director will consider the response.”</p>	S43 Cancellation of disposition is delegated to Senior land officer, Senior PA	<p>Section Head</p> <p>Cancellation for non-diligent use should be undertaken carefully; particularly as aquaculture is a farming practice so diligent use can at times be difficult to assess.</p>

Stated delegations in this document approved:



Director Authorizations, West Coast Region
November 11, 2017