

APPENDIX HMC-05

SUMMARY OF RIPARIAN RIGHTS

The following section (underlined italics) appears on the web site for State of Maine, Department of Conservation, and provides a guideline of the control of intertidal property. In negotiating a Submerged Lands Lease with the State of Maine, attention will have to be focused on some of the issues mentioned below.

Submerged Lands

Most of the land in Maine that is covered with water is publicly owned. Historically, this public ownership dates back to Colonial times when these lands were reserved as a public trust. That is, everyone had a right to use them for "fishing, fowling (hunting), and "navigation". These were considered essential public rights, and the State of Maine has retained these rights, and included public access and recreation, as have most other states. Piers and other structures located on submerged lands may be privately owned; the land and water beneath them are not.

The State of Maine defines publicly owned submerged lands as:

- **Coastal region (including islands):** All land from the [mean low-water mark](#) out to the three mile territorial limit. Where intertidal flats are extensive, the shoreward boundary begins 1,650 feet seaward from the mean high-water mark.
- **Tidal Rivers:** All land below the mean low-water mark of tidal rivers upstream to the farthest natural reaches of the tides.
- **Great Ponds:** All land below the natural low-water mark of ponds that are 10 or more acres in size in their natural state.
- **Boundary Rivers:** Land lying between the banks of rivers that form Maine's border with Canada.

Publicly owned submerged lands do not include beaches or other shoreland that is covered by water only at high tide, land that has been flooded by dams, land beneath ponds that are less than 10 acres in size, or land beneath non-tidal rivers that do not border Canada.

Structures located on submerged land require a lease or easement when the existing use is being changed or the size of an existing structure is being changed. A lease or easement is also required for new structures that will be permanent, or for new seasonal structures larger than 2,000 square feet and used for commercial fishing related purposes, or larger than 500 square feet for any other purpose. Leases or easements are also required for pipelines, utility cables, outfall/intake pipes, and dredging.

To qualify for a lease or easement, the proposed use cannot have adverse impacts on access to or over the waters of the State; public trust rights - fishing, waterfowl hunting, navigation, and recreation; and/or services and facilities for commercial marine activities.

The Bureau will usually not approve leases or easements for filling submerged land or for activities that could take place on the upland such as offices, parking space, restaurants, or residences.

The Bureau may place special conditions on the terms of a lease or easement when traditional and customary public uses are diminished. Projects may be required to include public walkways or boatramps; navigational improvements; publicly accessible space for fishing, sight-seeing, waterfowl hunting, or recreation; and/or protection of important commercial fishing and water dependent activities.

The size and nature of the project determines whether a lease, which has an annual rental fee, or an easement, which has a registration fee, is required. Application forms are available from the Bureau of Parks and Lands.

Structures on submerged lands that were in place prior to October 1, 1975 were granted constructive easements and currently do not require a lease. All constructive easements end on September 30, 2005 at which time a new lease or easement will be required. Changing the use or size of a structure removes it from constructive easement status. All constructive easements must be registered with the Bureau.

Additional information regarding the management of submerged lands, including the application process and related fees may be found in the [Submerged Lands Rules](#).

The Bureau also administers a program offering opportunities for qualified companies and individuals to salvage sunken logs from publicly owned submerged lands. For more information view the [Sunken Log Salvage Rules](#).

Statutory authority: [Title 12 M.R.S.A. Section 1801 and 1862-1867](#)

For more information about submerged lands, contact:

Submerged Lands Program
Maine Bureau of Parks and Lands
22 State House Station
Augusta, Maine 04333-0022
Telephone: (207) 287-3061
Fax: (207) 287-8111

The matrix listed below summarizes the tidal power regulation administered by the State of Maine in coordination with compliance requirements from municipalities and the Federal government.

DRAFT: January 13, 2009			
Tidal Energy Development Regulatory Matrix Maine's Coastal Waters ¹			
	Review Authority/Agency/Approval	Organized Areas	Unorganized Areas
State	Maine Waterway Development and Conservation Act - DEP or LURC - Permit ²	X	X
	Clean Water Act, Sec. 401 - DEP or LURC - Water Quality Certification ²	X	X
	Zoning - LURC - Rezoning Approval		X ³
	Submerged Lands Lease - Bureau of Public Lands - Lease	X	X
	Maine Endangered Species Act - DIFW and/or DMR - Review, Requirement ⁴	X	X
	Maine Historic Preservation - Maine Historic Preservation Commission - Review ⁵	X	X
	Coastal Zone Management Act - State Planning Office - Federal Consistency Review ⁶	X	X
Municipal	Mandatory Shoreland Zoning Act - Municipality - Permit ⁷	X	
Federal	Federal Power Act - FERC - Hydropower License	X	X
	National Environmental Policy Act (NEPA) - FERC (lead agency)- Review ⁸	X	X
	Executive Order 10485; Federal Power Act - Department of Energy/Federal Energy Regulatory Commission - Permit/Interconnection Approval ⁹	X	X
	Rivers and Harbors Act, Sec. 10; CWA, Sec. 404 - ACOE - Permit	X	X
	Federal Navigation Laws - U.S. Coast Guard - Permit	X	X
	Additional Federal Reviews: Endangered Species Act - U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) ¹⁰ , Marine Mammal Protection Act - NMFS and USFWS ¹¹ ; Migratory Bird Treaty Act - USFWS; Magnuson-Stevens Fisheries Conservation and Management Act - NMFS ¹² ; Naval operations laws- Navy	X ¹²	X ¹²
¹ Studies indicate development potential is inshore, within state waters ² Organized areas/DEP or unorganized areas/LURC ³ MWDCA requires consistency with LURC zoning; submerged lands zoned as wetlands ⁴ Provision for "incidental take" under certain conditions for DIFW-managed species. No "take" provision applies to DMR-managed species ⁵ Applicable under MWDCA and NEPA ⁶ Implemented through MWDCA process. ⁷ Local land use permit and building permit may also be required for land-based elements ⁸ Preparation of Environmental Impact Statement or Environmental Assessment; "hard look" at wide range of issues ⁹ DOE approval is required under Executive Order for international export of power. Must meet FERC's minimum interconnection standards. ¹⁰ Incidental take provision review if applicable ¹¹ Incidental take provision review if applicable ¹² "Essential fish habitat" review ¹³ Review agencies' comments considered in NEPA process and various permit reviews			