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Preamble

Under 12 MRSA §1867, the State of Maine reserves to itself title and ownership to all logs resting on publicly owned Submerged Lands. This statute authorizes the Director of the Bureau of Parks and Lands to establish a program allowing the Bureau to issue authorizations for the salvage and sale of sunken logs. The program, as set forth in these Rules, needs to be carefully administered to ensure that it is consistent with purposes as described below and the Bureau's overall stewardship role of public lands.

Summary

These Rules set forth the Bureau's requirements regarding the salvage of sunken logs on publicly owned Submerged Lands. These Rules also establish the procedures for granting sunken log salvage authorizations and for determining compensation to the State for sale of these logs.

Section 1: Authority

These Rules are established in accordance with 12 MRSA §1867 and the Administrative Procedures Act – 5 MRSA Sections 8051 to 8060.

Section 2: Purposes

The purposes of these Rules are to ensure that the removal of sunken logs on Submerged Lands does not unreasonably interfere with public trust rights and is accomplished in a publicly responsible and environmentally sound manner, and that the State is adequately compensated for the private use of these logs. The Rules also are intended to ensure that issuance of sunken log salvage authorizations is orderly and fair, and that the State administers the disposition of this finite resource in accordance with prudent business practices.

Section 3: Applicability

These Rules apply to the salvage of any sunken logs located on Submerged Lands (herein defined), with the exception of those activities described in Section 9.

Section 4: Definitions

Unless the context otherwise requires, the following terms will have the following meanings:

1. Applicant

The individual, company or entity proposing to salvage sunken logs.

2. Bureau

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

3. Director

"Director" means the Director of the Bureau.

4. Log

A portion of the trunk of a felled tree which has not been further processed for any end-use.

5. 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.

6. Salvage

Any activity involved in the retrieval of sunken logs from Submerged Lands.

7. Salvage Season

The time period each calendar year when salvage operations on Submerged Lands are allowed. The salvage season will generally run from May 1 to September 30, but starting and ending dates may be adjusted for individual authorizations to account for the date of "iceout," to avoid conflicts with fish spawning and recreational uses, or to account for extenuating circumstances.

8. Submerged Lands [12 M.R.S.A., §1801]
 - A. 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.
 - B. All land below the mean low-water mark of tidal rivers and streams up to the farthest natural reaches of the tides;
 - C. All land below the natural low-water mark of ponds which in their natural state are 10 or more acres in size; and
 - D. The river bed 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.
9. Sunken Logs

Logs resting on Submerged Lands.
10. Sunken Log Authorization

A written document issued by the Bureau giving the applicant conditional permission to salvage and sell logs located on Submerged Lands.
11. Vessel

Any watercraft used to salvage sunken logs.

Section 5: Application Procedures

1. General Provisions
 - A. Applications for a sunken logs salvage authorization will be accepted by the Bureau only during the application period. The application period will generally be from the first working day on or after January 15 to the last working day in the month of May. The Bureau may make adjustments to these dates on a year-to-year basis.

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- B. Applications for a sunken log authorization shall be made using an application form provided by the Bureau. Each application shall be accompanied by a nonrefundable \$100.00 application fee. An application will not be considered complete and the application will not be acted upon unless all of the information required by the Bureau has been submitted.
 - C. A separate application is required for each lake or noncontiguous river segment in which the applicant is proposing to conduct a salvage.
 - D. Usually within seven (7) days of receiving the application, the Bureau will make a determination of whether the application is complete, or whether additional information is needed to consider the application. 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.
 - E. Upon a determination that the application is complete, the Bureau will notify what it determines to be parties likely to be interested in the application. Interested parties may include, but are not limited to, local officials, landowners adjacent to the proposed salvage or take-out site, and others who have notified the Bureau of their interest in a particular project. Notification of interested parties may be delayed for applications received during the special application period and at other times during which competing applications are being resolved in accordance with Section 5, Subsection 2 below.
 - F. The Bureau may also seek advice regarding potential impacts from State and Federal agencies including but not limited to other Bureaus within the Maine Department of Conservation, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, and the U.S. Department of the Army, Corps of Engineers.
 - G. Upon notification of interested parties, there will 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 an interested party for 15-day extension of this date may be granted by the Director for good cause. The review period also may be extended or reopened in cases in which the Director determines that additional information or studies are needed to address issues or concerns identified during the review process.
 - H. Ordinarily, within ten (10) days after the conclusion of the designated review period, the Bureau will approve, approve with conditions or deny the proposed log salvage.

- I. The Bureau's written decision will include findings relevant to its decision. The sunken log salvage authorization will be in the form of a contract between the Bureau and the applicant. If the salvage is approved, two copies of the authorization will be sent to the applicant for signature. No salvage operations shall commence until the signed authorizations are received by the Bureau and the applicant has met all other applicable authorization conditions.
- J. Materially incorrect information submitted in conjunction with an application for a sunken log authorization will constitute grounds for the Bureau's reconsideration or rescission of its decision and any authorization issued.

2. Competing Applications

A. Special Application Period

- (1) The time period from the beginning of the application period to a date specified by the Bureau will be designated a special application period. Generally, the special application period will be open for ten (10) working days; however, the Bureau may make adjustments to this time period on a year-to-year basis.
- (2) After reviewing applications for completeness and prior to notifying interested parties, the Bureau will review all complete applications received during the special application period to determine if there are multiple proposals to salvage logs in the same areas.
- (3) If the Bureau finds there are multiple proposals for salvage in the same areas, the Bureau will evaluate whether the areas can accommodate the proposals of all the applicants interested in salvaging in the areas based on the following criteria:
 - (a) Whether the areas can accommodate the proposals without unreasonable interference with navigation and other public trust rights;
 - (b) Whether the areas can accommodate the proposals in a manner consistent with the other General Standards of Section 6; or
 - (c) Whether, based on available information using conservative estimates, the marketable sunken log resources in the areas are sufficient to accommodate the proposals.

- (4) If the Bureau determines that the areas cannot accommodate the proposals of all the applicants interested in salvaging in the areas, the Bureau, at its discretion, may take the following actions:
 - (a) Establish “standoff” distances for salvage vessels operating in the same areas;
 - (b) Limit the amount of the salvage within the proposed area by designating the maximum board feet of logs allowed per applicant;
 - (c) Divide the areas into sub-areas and assign applicants rights to logs within the sub-areas;
 - (d) Stagger salvage activities according to defined time frames to avoid congestion;
 - (e) Limit the number of applicants authorized to conduct sunken logs salvage in the areas or sub-areas by use of a random drawing conducted by Bureau staff, and allow those not selected to apply for log salvages in other areas; and/or
 - (f) Place other limitations on salvage operations that the Bureau determines to be reasonable.
- (5) Upon establishing the salvage location and amount for each application, the Bureau will proceed with the notice requirements described in Section 5, Subsection 1 above.

B. General Application Period

- (1) In reviewing applications received after the special application period, the Bureau shall not issue authorizations for areas in which salvage proposals have already been approved or are being processed, unless the Bureau determines that the proposed salvage can be accommodated based on criteria of Section 5.2.A (3). In allowing additional salvages in the same area, the Bureau may impose conditions regarding the amount, location and timing of the salvage.
- (2) Based on authorizations it is processing or has approved, the Bureau may, at any time after the special application period, determine that it will not accept additional applications for sunken log salvage on particular waterbody or area of the waterbody for that salvage season.

Section 6: General Standards

The Bureau may grant a sunken log authorization if it finds that the applicant has demonstrated to the Director's satisfaction that the proposed sunken log salvage meets the following standards:

1. The salvage will not unreasonably interfere with customary or traditional public access to, or public trust rights or uses in, on or over Submerged Lands and the waters above those lands [12 MRSA §1867, sub§ 3];
2. The salvage will not unreasonably interfere with navigation, recreation, fishing, fowling or existing marine uses of the area or unreasonably interfere with ingress and egress of riparian owners;
3. The salvage will not result in significantly increased risk to life or injury under conditions of weather and vessel traffic that are likely to be encountered;
4. The salvage will not conflict with established management guidelines designed to protect aquatic habitats or other areas of Submerged Lands which have been designated for special protection by an agency authorized to make such designations;
5. The salvage is not otherwise determined to be contrary to the public interest;
6. The applicant has demonstrated adequate financial and technical ability to conduct the salvage in a lawful, publicly responsible, environmentally sound and competent manner, to pay for the use of the logs and to otherwise meet the requirements of these Rules and the conditions of the authorization;
7. The anticipated value of the salvaged logs as derived from their sale or use by the applicant approximates their market value as determined by the Bureau;
8. The salvage will be consistent with all other provisions of these Rules; and
9. The applicant has complied with and is in good standing regarding previous authorizations issued by the Bureau.

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

Section 7: Compensation

1. Amount
 - A. The applicant shall pay the Bureau compensation for the logs in an amount not less than 20% of the market value of the logs as determined after they are salvaged and ready for sale or processing.
 - B. Market value for the purposes of paragraph 1 will be calculated in one of the following methods as approved by the Bureau.
 - (1) The gross value or mill-delivered price as shown on scaling slips or receipts produced by the buyer of whole logs and submitted to the Bureau. This value will not include reductions or allowances for transportation or other factors;
 - (2) The market value as determined by the Bureau after the logs are scaled by a licensed log scaler acceptable to the Bureau or by Department of Conservation staff. In assigning market value using this approach, the Bureau will consider the specifications and prices of selected mills and/or buyers of salvaged logs, and information on salvaged log values from operations already authorized by the Bureau; or
 - (3) Another method as negotiated between the Bureau and the applicant, and determined by the Bureau to reasonably approximate market value.
2. Timing of Payments
 - A. For whole logs sold to and scaled by a buyer, payment of the royalty in full shall be made to the Bureau within 14 days of the date of log scaling.
 - B. For logs in which market value is being determined by the Bureau, payment shall be made in full within 14 days of the Bureau's determination of market value.
3. Late Payments
 - A. A penalty on late payments will be assessed and paid at a rate that will be established in the authorization.
 - B. If payment is not received by the due date, all salvage activities shall cease, unless the Bureau has given specific written permission to allow the operation to continue, and only under any conditions imposed as part of that permission.

- C. In cases in which the Bureau has not received payment of all sums due within 14 days of the due date, the Bureau, at its discretion, may take the following steps:
- (1) Revoke other sunken log salvage authorizations issued to the applicant,
 - (2) Deduct all amounts owed the Bureau from the applicable performance guarantee held by the Bureau;
 - (3) Take possession of any logs that have been salvaged; and/or
 - (4) Take any other steps allowed under the law.

Section 8: General Terms and Conditions

1. Salvage limits
 - A. No person, nor any subsidiaries, subcontractors, partners or legal entities associated with that applicant, may be issued sunken log salvage authorizations allowing an aggregate of more than 125,000 board feet of sunken logs in any given salvage season.
 - B. The Bureau will only issue authorizations for the current year's operations. Authorizations are not transferable or applicable to future salvage seasons. In cases in which delays in obtaining regulatory permits or other necessary approvals prevent the start of salvage activities for the current salvage season, the Bureau may reissue the salvage authorization for the following salvage season.
2. Insurance Coverage
 - A. Applicants shall provide worker's compensation insurance for all of their employees as required under law.
 - B. Applicants shall provide evidence of and maintain for the term of the salvage authorization, adequate and appropriate insurance coverage. Liability insurance shall be in an amount not less than \$400,000 per occurrence. At a minimum, this insurance shall cover liability claims, and shall cover all aspects of the salvage operation, including but not limited to, diving, retrieval and transport of logs, use of marine vessels, and operation of other machinery and equipment.

- C. Applicants shall agree to hold the Bureau and the State harmless against all claims, demands, judgments for loss, damage, death or injury arising out of the applicant's activities and operations.

3. Financial Capacity

- A. Prior to beginning any salvaging operations, applicants shall provide a performance guarantee in the form of either an irrevocable letter of credit or an escrow account to be held by the Bureau until final payment is received.
- B. The amount and type of the performance guarantee will be approved by the Bureau, but shall not be less than 10% of the projected market value of the salvaged logs as determined by the Bureau.
- C. As part of the application process, applicants shall demonstrate that they have a viable market for the salvaged logs. If the logs are to be sold to a third party, the applicant shall provide the name of the prospective buyer or mill, the specification and price list from the buyer and mill, and copies of any contracts or agreements between the applicant and the buyer/mill. The Bureau reserves the right to deny sunken log authorizations if it determines that the anticipated value derived from sale or use of the logs by the applicant is significantly below the market value of the logs as estimated by the Bureau.

4. Technical Capability

- A. Prior to the Bureau issuing an authorization, applicants must demonstrate that:
 - (1) They have competency in sunken log salvage, or in other fields that involve similar skills, duties and responsibilities.
 - (2) All divers participating in the operation are fully qualified. In addition to holding the appropriate certifications for the type of diving proposed in the operation, all divers shall have at least two (2) years diving experience in a commercial setting. Dive log books shall be available for the Bureau's inspection upon request. The Bureau may relax certification requirements if the applicant demonstrates an extensive background in commercial diving beyond two (2) years experience.
 - (3) The dive team includes, in addition qualified divers, a qualified "tender" who holds current certificates in Cardiovascular Resuscitation and First Aid, is familiar with safe dive practices, and either holds a current tenders license from the Maine Department of Marine Resources, or otherwise demonstrates competency to serve as a tender.

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- (4) If diving is involved, that the applicant possesses a current edition of the publication “Consensus Standards for Commercial Diving Operations” published by the Association of Diving Contractors, Inc., and that all divers and tenders are familiar with this publication; and
 - (5) They own or will lease equipment and machinery, that, in conjunction with the methods proposed for the retrieval, transport and landing of logs, will allow the proposed salvage to be conducted in a publicly responsible, environmentally sound and competent manner.
 - B. In issuing authorizations, the Bureau may include terms and conditions aimed at ensuring that the operation meets the technical capability standard of Section 6, including but not limited to:
 - (1) Assurances that the operation will be conducted in accordance with referenced standards relating to diving, marine and general work safety;
 - (2) Assurances that the operation as conducted will adhere to the approach proposed in the application, including use of qualified personnel, adequate equipment and appropriate salvage methods.
 - (3) Assurances that the applicant will conduct all diving operations in accordance with the applicable provisions of the “Consensus Standards for Commercial Diving Operations,” published by the Association of Diving Contractors, Inc.
 - (4) Other terms and conditions deemed necessary for the operation to meet the technical capability standard and the other requirements of these Rules.
 - C. In evaluating technical capability, the Bureau will consider the applicant’s performance during previous salvages authorized by the Bureau.
 - D. Failure to meet any of the requirements pertaining to technical capability in the authorization or these Rules will be grounds for the Bureau’s rescission of the authorization in accordance with Section 11.
 5. Post Authorization Procedures and Notifications
 - A. After the Bureau issues a sunken log salvage authorization, no salvage work shall start until the applicant has complied with all terms and conditions of the authorization and of these Rules pertaining to:

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- (1) Performance guarantees,
 - (2) Insurance coverage,
 - (3) Other necessary State and local permits, and
 - (4) Other applicable pre-operation submissions or requirements.
- B. Prior to the start of salvage work, the applicant shall contact the Bureau to inquire if all applicable terms and conditions have been met to the Bureau's satisfaction. If the Bureau determines they have, it shall give the applicant written permission to start work. If not, the Bureau shall notify the applicant what terms and conditions need to be met prior to the start of work.
- C. The applicant shall notify the Bureau staff of the following other occurrences:
- (1) The actual start date of the operation;
 - (2) The date the logs arrive at the mill or buyer's location.
 - (3) At other times as required in the authorization.
6. Take-Out Site
- A. Applicants shall designate the take-out site or site(s) for the removal of logs from the water.
 - B. The take-out site(s) shall be reasonably located to minimize the transport distance of salvaged logs on water bodies and minimize impacts on public trust uses.
 - C. Applicants shall demonstrate and maintain adequate rights in take-out sites in order to use the sites as proposed. For this purpose, applicants shall provide a copy of a deed, lease, or other legal document showing sufficient rights to use the property as a take-out site.
 - D. When logs are stored on Submerged Lands at the take-out site(s), they shall be deposited in such a manner that they do not unreasonably interfere with navigation or other public trust rights, or create a safety hazard.
 - E. Provision shall be made for proper disposal or storage of logs not sold or processed by the applicant.

7. Assignment

The authorization is nontransferable and shall not be assigned without prior written permission from the Bureau. Assignment will not be permitted unless the potential assignee demonstrates adequate technical and financial capability and otherwise can meet the provisions of these Rules.

8. Archeological Sites

No logs may be removed or Submerged Lands disturbed that are part of an archeological or heritage site as determined by the Bureau or other governmental agency. Such sites shall include but not be limited to, shipwrecks and their cargos, artifacts, cribs, wharves, and weirs. It is the responsibility of the applicant to ensure that the salvaged logs are not part of such a site and to contact the Maine Historic Preservation Commission in the event that archeological or heritage sites are encountered.

9. Other Public Trust Uses

The area where the salvage is conducted shall remain open to other public trust uses to the maximum extent possible, provided such uses do not unreasonably interfere with the salvage operation.

10. Salvage Limitations in Specified Areas

- A. The Bureau may impose limitations on salvage operations on certain Submerged Lands in order to reduce potential conflicts with other public trust uses, minimize potential environmental or ecological impacts, or address other management considerations. The Bureau will consider such limitations based on input from State agencies or other organizations that have management responsibility or jurisdiction over particular resources or bodies of water.
- B. Such limitations may include prohibiting log salvage on certain waterbodies or portions of waterbodies, limiting the number or size of salvage operations allowed on waterbodies or portions of them or imposing conditions on the timing of salvages to minimize conflicts and impacts.
- C. Applicants proposing to salvage logs in any area the Bureau has imposed a salvage limitation will be so notified upon receipt of their application.

11. Waiver for Annual Salvages Less than 5,000 Board Feet

In the case of applicants proposing to salvage a total of 5,000 board feet or less of sunken logs during the salvage season, the Director may waive selected terms and conditions of Section 8 of these Rules in the review of applications submitted by such applicants, if the Director finds the application otherwise meets the General Standards of Section 6. In no instance shall the director waive the requirement of insurance coverage. Waiver of the performance guarantee requirement shall only be made if the applicant otherwise demonstrates adequate financial capacity.

Section 9: Exemptions

The following activities are exempt from having to obtain a sunken log authorization from the Bureau:

1. The removal of any logs from flowed lands or other areas other than Submerged Lands as herein defined.
2. The removal of single sunken logs that pose a threat to navigation and safety;
3. The removal of multiple sunken logs that pose a threat to navigation and safety, with the Bureau's written permission;
4. The removal of less than 500 board feet of sunken logs for scientific or educational purposes, with the Bureau's written permission; and
5. The removal of sunken logs by governmental agencies, with the Bureau's written permission.

Section 10: Conformance with Other Requirements

All sunken log salvage operations shall comply with all applicable laws and regulations of any Federal, State or local authority having jurisdiction, and no sunken log salvage activities shall commence prior to the applicant obtaining all necessary permits and other approvals. If the applicant fails to obtain and comply with all permits and other approvals, this authorization will be revoked or suspended until such permits and other approvals are obtained.

Section 11: Compliance and Enforcement

1. The Bureau and its designees reserve the right to inspect any sunken log salvage operation to determine if it is being carried out in accordance with the terms and conditions of the authorization and these Rules. Designees of the Bureau may include

staff of the Maine Departments of Conservation, Environmental Protection and Inland Fisheries and Wildlife, and other agencies or persons approved by the Bureau.

2. If the Bureau determines that a salvage operation is not in compliance with the terms and conditions of the authorization and of these Rules, the applicant will be notified of the violations and the Bureau may provide, at its discretion, a time period for remedying the violations. At its discretion, the Bureau may require that salvage work be suspended while the violation is being remedied.
3. If an applicant fails to correct a violation within the stated time frame set by the Bureau, the authorization may be revoked by the Director in addition to any other remedy provided herein or by law. Violation of these Rules is a Class E crime. (12 MRSA §1803).

Section 12: Other Rules and Statutes

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

Section 13: Effective Date

These Rules are effective as of May 2, 2000.

EFFECTIVE DATE:

May 2, 2000

NON-SUBSTANTIVE CORRECTIONS:

November 23, 2000 - minor spelling and punctuation