# Department of Fisheries, Forestry and Agriculture

# Administration of Crown Lands

Independent Auditor's Report

October 2024

OFFICE OF THE AUDITOR GENERAL
NEWFOUNDLAND AND LABRADOR

# Audit Overview

OFFICE OF THE AUDITOR GENERAL
NEWFOUNDLAND AND LABRADOR

## Objective

To determine whether the Department of Fisheries, Forestry and Agriculture effectively manages the administration of Crown lands.

## Audit Period

April 1, 2020 - December 31, 2023

## Why this Audit is Important

Crown Lands are intended to be used for the social and economic benefit of Newfoundlanders and Labradorians - anything that causes a deviation from that purpose creates the risk of land misuse or misappropriation, and may cause unnecessary harm to residents and the economy. When guidance policies and procedures are either outdated or functionally ineffective, it becomes impossible to establish a foundation for best practice and the risk of mismanagement increases. Inconsistent application of existing policies and procedures can lead to unpredictable and possibly unfair outcomes for the public accessing Crown lands. Government is the custodian of provincial Crown lands, as a result it is responsible for ensuring appropriate program management and oversight as well as effective and practical communication with the public.

## Conclusions

We have serious concerns with the Department of Fisheries, Forestry and Agriculture's ability to effectively manage Crown lands' administration. Systemic issues may have encouraged the misuse of, or allowed for, the extended illegal occupation of Crown lands - which may have contributed to public safety risks, negative environmental impacts, strains on the province's court system, and affected the well-being of land owners.

The foundation of Crown lands administration has been built on an inadequate lands registration system. Policies and procedures are significantly outdated, informal, or non-existent, and the Crown Lands Division has an incomplete inventory of lands records. Processes are notably inconsistent between regions and divisional oversight of those responsible for administration is informal. Key performance indicators and risk management processes were not formally documented or clearly defined, and reporting of performance at any level was ad hoc at best. These weaknesses may have led to opportunities for instances of fraud; conflicts of interest to have influenced decision-making; and inhibited management's ability to assess how well it is meeting its objectives.

The department had no formal policy, procedures, or guidance relating to complaints management, enforcement, and inspections. The department also did not effectively carry out its monitoring, inspection, or enforcement responsibilities. These responsibilities were poorly communicated in the department and minimal enforcement activities were performed during our audit; this may have contributed to the misuse of, or illegal occupation of, Crown lands.

## Summary of Recommendations

1. The Department of Fisheries, Forestry and Agriculture update and implement formal policies, procedures, and internally developed process documents relating to the administration of Crown lands and related enforcement activities. Once formalized, they should also be regularly reviewed and communicated to all relevant personnel across all regions.
2. The Department of Fisheries, Forestry and Agriculture adopt formal oversight processes, including risk management processes, related to the administration of Crown Lands.
3. The Department of Fisheries, Forestry and Agriculture, in consultation with other departments as needed, address the issues identified in this audit with respect to land systems, including registration and titles management.
4. The Department of Fisheries, Forestry and Agriculture address the issues identified in this audit with respect to the accuracy of public information regarding available crown land.

## After reading this report, you may want to ask the following questions of government:

1. When will government act on the land system recommendation from the 2015 Lands Act review?
2. What action will government take to fix the departmental administration issues relating to policies, procedures, monitoring, and oversight identified in this audit?
3. How will government ensure that complaints received from the public are appropriately and consistently handled?

# Audit Overview

OFFICE OF THE AUDITOR GENERAL
NEWFOUNDLAND AND LABRADOR

## What We Found

### Land Systems

- Government did not have a lands title system, lacked a unified land system, and title registration was also not mandatory.
- Registries across government were not reconciled with each other and often contained different information about land ownership.
- The Department of Fisheries, Forestry and Agriculture had not implemented the 2015 recommendation of the Lands Act Review.

### Crown Lands Inventory and Record Keeping

- There was no complete list, or mapping inventory, of all available Crown lands. Additionally, mapping information in the Land Use Atlas was outdated and contained inconsistencies compared to the records management system.
- The records management system was missing approximately 17,000 titles - approximately 15,000 titles that existed in physical copies were not digitalized and approximately 2,000 titles destroyed by fire in 1892, and not yet recovered.

### Policies and Procedures

- Most departmental policies were severely outdated. The average age of policy documents was 20 years.
- The application referral process and related drafted guidelines were incomplete and inconsistent across regions.
- Land survey spot checks were done for large projects (cottage planning areas and large agriculture projects), but rarely done otherwise. There were also inconsistent processes across regions and subjectivity within how process steps were completed and documented.

### Crown Lands Applications

- 33 of 53 samples (62%) did not meet the department's internal 90-business day processing standard for routine applications as noted on their website. The average processing time for these samples was 172 business days, with the longest being 615 business days.
- When compared to the official 2002 delegation policy, 16 of 54 applications (30%) had not been approved by the appropriate person.
- We found two of three samples classified as commercial applications (67%) had no support indicating the company having a status of good standing, yet the applications had been approved. We found the check for good standing in the registry of companies and deeds online was the only due diligence performed to verify the commercial applicant.

### Government Transfers

- 13 transfer applications (37%) took over 150 business days to be processed.
- There was no internal standard regarding processing times or survey response time for government to government transfers.

### Monitoring and Inspecting

- There were no formalized processes for the routine monitoring and inspecting of non-agricultural Crown lands to ensure the use of land adhered to application conditions.

### Delegation of Responsibilities

- The Resource Enforcement Division did not have the proper authorities required to legally enforce the Lands Act, and monitoring and enforcement activities were not appropriately delegated, resulting in confusion between divisions.
- There were periods of time since May 2021 that neither the Crown Lands Division or the Resource Enforcement Division believed they were responsible for monitoring, inspecting, and enforcement activities.
- There were instances when the Resource Enforcement Division thought they were responsible for inspecting, monitoring, and enforcement activities but were not actually legally able to perform these activities; as a result unauthorized actions were taken. For example, invalid stop orders were issued.

### Complaints and Enforcement

- The department had no formal policies or procedures for handling public complaints or transferring them.
- In 23 of the 36 complaints sampled (64%), there was no evidence of any action taken by the department.
- The department did not enforce removal of illegal structures when the occupier did not comply; In four of eight samples (50%) there was nothing to indicate follow-up had been completed to see if the structure had been removed. Illegal occupancy of Crown lands continues to be an issue due to the lack of proactive monitoring, inspections and enforcement.
- There were no formalized enforcement policies, procedures, or processes and minimal enforcement was performed during our scope period.

### Oversight

- There were informal and inconsistent oversight processes across regions, and key performance indicators, including reporting requirements, were not clearly defined.
- There was only one individual performing land value appraisals and there was no established review process; there was also no other person that performed or regularly reviewed the appraisal work.

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# Background

Crown lands are owned by the government and make up approximately 88 per cent of the province's 40.57 million hectares of land; the remaining 12 per cent of land is used by government or owned by individuals or businesses. The Lands Act governs Crown lands; it includes functions such as - but not limited to - issuing titles (right to use), survey requirements, fee payments, adverse possession, inspections, unauthorized use of land, removal of structures, and government transfers. Approximately 1,600 titles to Crown lands are registered each year.

The Department of Fisheries, Forestry and Agriculture's mandate includes the administration of Crown lands and there are several divisions within the department that support its mandate:

- The Crown Lands Division is responsible for managing and allocating the province's Crown lands in a manner that is socially and economically beneficial to Newfoundlanders and Labradorians. It is responsible for the Crown Lands Registry, created in 1849, which houses over 72,000 grants, leases and Crown lands licenses. The division uses a records management system to store application support information, title documents, quieting of titles documents (the legal process of removing competing claims or challenges to title), deeds, and some complaint information. The division has a head office in Corner Brook and three regional offices: Eastern Regional Office, Central Regional Office, and the Western and Labrador Regional Office.

- The GIS and Mapping Division is responsible for planning, developing and supporting the Geographical Information System and the Land Use Atlas. The department uses the Geographic Information System and the Land Use Atlas to maintain Crown lands data, such as the availability and restrictions of the land. These systems are linked; the Geographic Information System serves as the back-end system used by employees, while the Land Use Atlas is the public-facing version of the Geographic Information System.

- The Land Management Division is responsible for protecting existing and future agricultural lands and ensuring land use and resource management activities are incorporated into an integrated resource management approach.

- The Resource Enforcement Division performs an enforcement role. The division conducts compliance inspections, reports inspection results to the Crown Lands Division, and delivers stop orders and action orders for the removal of structures. They are also responsible for monitoring activities including completing follow-up inspections once orders have been issued to ensure land is restored to a satisfactory condition. These activities are usually carried out because of public complaints. The division was delegated this authority in May 2021; prior to this, these duties were the responsibility of the Crown Lands Division. Since receiving this authority, there were periods of time when the Resource Enforcement Division was not performing enforcement activities as a result of legal advice received. In May of 2024, during our audit, the Resource Enforcement Division received an operational directive allowing them to resume Crown Lands enforcement work.

Our audit period covered April 1, 2020, to December 31, 2023, and included one line of inquiry: to determine whether the Department of Fisheries, Forestry and Agriculture effectively manages the administration of Crown lands. Four criteria were established to assess this line of inquiry.

# Summary of Key Findings

## Land Systems

- The government did not have a lands title system, lacked a unified land system, and title registration was not mandatory.
- The Crown Lands Registry in the Department of Fisheries, Forestry and Agriculture and the Registry of Deeds at Digital Government and Service NL were not reconciled with each other and could contain different information about land ownership.
- The Department of Fisheries, Forestry and Agriculture had not implemented the 2015 recommendation of the Lands Act Review.

## Crown Lands Inventory and Record Keeping

- There was no complete list, or mapping inventory, of all available Crown lands within the province.
- Mapping information in the Land Use Atlas was not always up-to-date and contained inconsistencies compared to the records management system.
- The records management system was missing approximately 17,000 land titles - approximately 15,000 titles that existed in physical copies were not digitalized and approximately 2,000 titles destroyed by fire in 1892 and not yet recovered.

## Policies and Procedures

- The majority of departmental policies for the administration of Crown lands were severely outdated. The average age of policy documents was 20 years.
- The majority of policy documents were approved and dated in 2006, and some were dated as far back as 1985.
- The Crown lands application processing manual (dated September 2010) did not reflect the current version of the records management system used to administer Crown lands.
- There were no formally documented policies or procedures for transfers of Crown lands to provincial or federal departments or other government agencies.
- The Crown Lands Division did not have an up-to-date policy for referrals.
- There were multiple versions of draft guidelines for referrals, one dated 2017 and another dated 2023. However, to date, neither have been officially approved for use by staff and we found differences in process steps between the various draft versions.
- Land survey spot checks were reportedly done for large projects, such as cottage planning areas and large agriculture projects, but rarely done otherwise.
- There were inconsistent processes across regions and subjectivity about how process steps were completed and documented.

## Crown Lands Applications

- We attempted to assess processing times for the population of applications from the records management system, however, we found the date information was inaccurate. Specifically, application information was often entered after receipt and/or processing.
- 33 of 53 samples (62 per cent) did not meet the department's internal 90-business day processing standard for routine applications as noted on their website. The average processing time for these samples was 172 business days, with the longest being 615 business days.
- We found that processing time was defined by the department as the period of time between the application submission date and the date the applicant received conditional approval or rejection from the Crown Lands Division. We found it did not include the number of days spent on subsequent steps, such as receiving and reviewing the survey, the land appraisal, the final review, and the title issuance.
- When compared to the official 2002 Ministerial delegation policy, 16 of 54 applications (30 per cent) had not been approved by the appropriate person.

- Department officials indicated they had been instructed by department executives in 2019 to follow a proposed Ministerial delegation of authority. However, department officials could not provide supporting evidence of this instruction. We compared our testing samples to this proposed listing from 2019 and found there were seven applications (13 per cent) not approved by the appropriate person. These seven were included in the 16 that were not appropriately approved when compared to the 2002 delegation.
- In one of 63 application samples (two per cent), a referral agency had refused the application but after discussions with the Deputy Minister of Fisheries, Forestry and Agriculture, the application was reopened and approved by the Crown Lands Division.
- In another application (two per cent) where grant of land was approved by the Crown Lands Division, a referral agency had given an initial refusal, and later changed their opinion despite not being able to issue the associated permit under the Water Resources Act.
- We found one sample (two per cent) where the Crown Lands Division referral response stated, “Lands Management Officer response no longer required,” but department officials could not give a reason why. This application was approved and issued with this comment made.
- We found two out of three samples classified as commercial applications (67 per cent) had no support indicating the company having a status of good standing, yet the applications had been approved. We found the check for good standing in the registry of companies and deeds online was the only due diligence performed to verify the commercial applicant.

## Government Transfers

- There was no internal standard regarding processing times or survey response time for transfers.
- 13 transfer applications (37 per cent) took over 150 business days to be processed.

## Monitoring and Inspecting

- There were no formalized processes for the routine monitoring and inspecting of non-agricultural Crown lands to ensure the use of land adhered to application conditions.

## Delegation of Responsibilities

- Monitoring and enforcement activities were not appropriately delegated by the Minister, which resulted in confusion between divisions.
- The Resource Enforcement Division did not have the proper authorities required to legally enforce the Lands Act.
- There were periods of time since May 2021 that neither division believed they were responsible for monitoring, inspecting, and enforcement activities.
- There were instances when the Resource Enforcement Division thought they were responsible for inspecting, monitoring, and enforcement activities but were not actually legally able to perform these activities; as a result, unauthorized actions were taken, for example, invalid stop orders were issued.

## Complaints and Enforcement

- The department had no formal policies or procedures for handling public complaints; the Resource Enforcement Division also did not have a centralized formal process for handling complaints.
- There was no consistent guidance provided to the Crown Lands Division regions about transferring complaints to the Resource Enforcement Division for action.
- In 23 of the 36 complaints sampled (64 per cent), there was no evidence of any action taken by the department.
- Of the 32 samples with documented complaint forms, 27 (84 per cent) contained clerical errors or missing information.
- There were no formalized enforcement policies, procedures, or processes and minimal enforcement was performed during our scope period.
- Even though the department had authority through the Lands Act, it did not attempt to remove illegal structures occupying Crown lands.
- The department did not enforce removal of illegal structures when the occupier did not comply.
- In four of eight samples (50 per cent) there was nothing to indicate they had been followed up on to see if the structure had been removed.
- Illegal occupancy of Crown lands continues to be an issue due to the lack of proactive monitoring, inspections and enforcement.
- The division could only charge the fee if the individual applied for the land they had been unlawfully occupying, and if that individual then decided to cancel their application, they would no longer have to pay the fee.

## Oversight

- There were Informal and inconsistent oversight processes across Crown Lands Division regions.
- Key performance indicators, including reporting requirements, were not clearly defined.
- There were no formal monitoring or quality control processes pertaining to the administration of Crown lands.
- There was only one individual performing lands value appraisals in the Crown Lands Division. There was no established review process, and no other person performed or regularly reviewed the appraisal work.

# Findings - Land Systems

## Criteria 1

To determine whether the department has a process in place that allows it to account for and track Crown lands.

## What We Expected

We expected the Department of Fisheries, Forestry and Agriculture to have a land titles system or mandatory land registration system, or a transition plan to implement one of these systems. We expected actions would have been taken, including working with other departments when necessary, to implement Crown lands related recommendations from the 2015 Lands Act Review and the 2021 Big Reset report.

Like any other government department, we expected Fisheries, Forestry and Agriculture would have complete records of all Crown lands title transactions, including accurate mapping information. We also expected the department would have all title records entered into the records management system to help facilitate the administration of Crown lands, which would also improve the public's ability to search for Crown land.

## What We Learned

### Land Systems

**We found government did not have a lands title system. We also found government lacked a unified land system, and title registration was not mandatory.** Instead, we found there were different registries under different provincial government departments that dealt with land ownership: the Crown Lands Registry under the Department of Fisheries, Forestry and Agriculture and the Registry of Deeds under Digital Government and Service NL. **These registries were not reconciled with each other and could contain different information about land ownership.**

In a Land Registration System, the onus is on the individual to determine valid title through extensive historical investigations and the government does not guarantee ownership rights and land claims. In contrast, Land Title Systems operate on the principal of title by registration and the Crown guarantees the title and land being recorded is conclusive evidence of ownership. We found, like Newfoundland and Labrador, only two other provinces (Prince Edward Island and Quebec) did not have a land title system. Nova Scotia, New Brunswick, and Ontario are transitioning to a land title system, and British Columbia, Alberta, Saskatchewan, Manitoba, and all the territories have a land title system.

**We found the Department of Fisheries, Forestry and Agriculture had not implemented the 2015 recommendation of the Lands Act Review.** The purpose of the review was to develop informed recommendations on how to modernize the Act and make the Crown lands application process simpler and more efficient. The Lands Act Review recommended the Department of Municipal and Intergovernmental Affairs (now the Department of Fisheries, Forestry and Agriculture) move toward a mandatory land registration system, or even further toward a land titles system.

## Crown Lands Inventory and Record Keeping

**We found there was no complete list, or mapping inventory, of all available Crown lands in the province.** Due to the lack of mandatory registration of land, the province is currently unable to acknowledge all that is, or is not, privately held land. When asked for a listing, officials provided us with data from the records management system which only included lands with issued titles they had record of and information related to applications.

**We found the mapping information in the Land Use Atlas was not always up-to-date and contained inconsistencies compared to the records management system.** We found one file that had gone through a court process and was subsequently denied issuance of title in 2012 and therefore should have appeared as available for sale to the public, but the Land Use Atlas still showed it as unavailable due to 'quieting of titles' in 2024. In another instance the Crown Lands Division froze a high demand area of land in 2021; however, this update was still not apparent in the Land Use Atlas as of mid-2024.

**We also found the records management system was missing approximately 17,000 land titles - approximately 15,000 titles that existed in physical copies have not been digitalized and approximately 2,000 titles destroyed by fire in 1892.** The department has been attempting to digitalize the 15,000 records since the 1980s and recover the 2,000 titles that were destroyed in the fire of 1892.

## Why It Matters

As the administrator of Crown lands, the Department of Fisheries, Forestry and Agriculture has the responsibility to manage Crown lands in a manner that best serves public interests. Having an outdated, non-mandatory land registration systems creates a disconnect between what the public understands Crown lands to be and what the government understands Crown lands to be; this means that individuals may not have legal title to land and not realize it until they attempt to sell that land. This can lead to unnecessary strains on Crown Lands Division administration, the court system, and the individuals involved.

The current land registration system, and the lack of complete or accurate records in the records management system, makes the public's ability to search the system ineffective. The process to search for records or apply for and obtain land title can be extremely cumbersome. Incomplete records and the lack of a land inventory system also presents significant challenges in adverse possession cases, commonly known as "squatter's rights," and for related enforcement activity.

# Findings - Policies & Procedures

## Criteria 2

To determine whether the Department of Fisheries, Forestry and Agriculture allocates Crown lands in accordance with legislation and policies and procedures.

## What We Expected

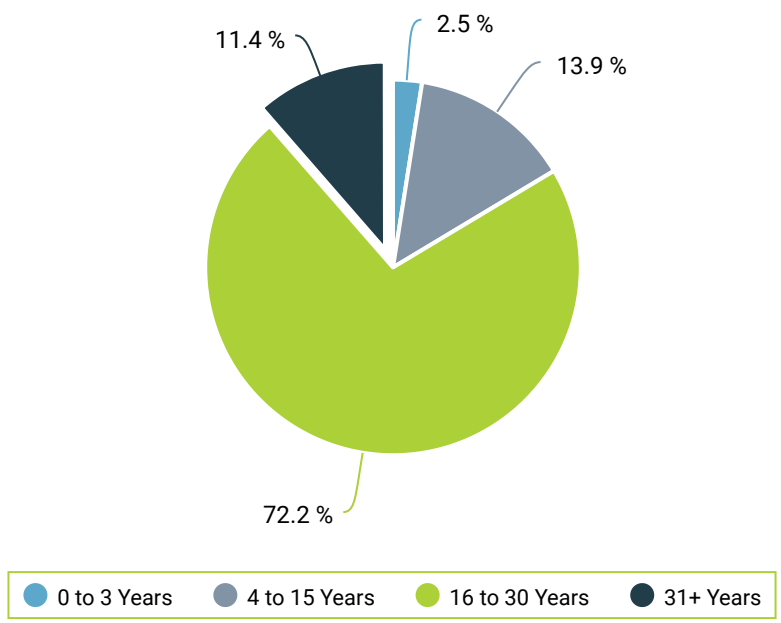
We expected the Department of Fisheries, Forestry and Agriculture would have up-to-date policies, procedures, and guidelines for Crown lands administration, and that those standards would be consistently followed across all regions. We expected the department would meet its publicly stated 90-business day service standard for application processing and would adhere to an official approval authority listing throughout its application process; and that supporting documentation for the application process would be well-maintained and handled consistently across all regional offices.

## What We Learned

### Policies and Procedures

**We found the vast majority of departmental policies for the administration of Crown lands were severely outdated. The average age of policy documents was 20 years.** See Figure 1 for a summary of policy ages.

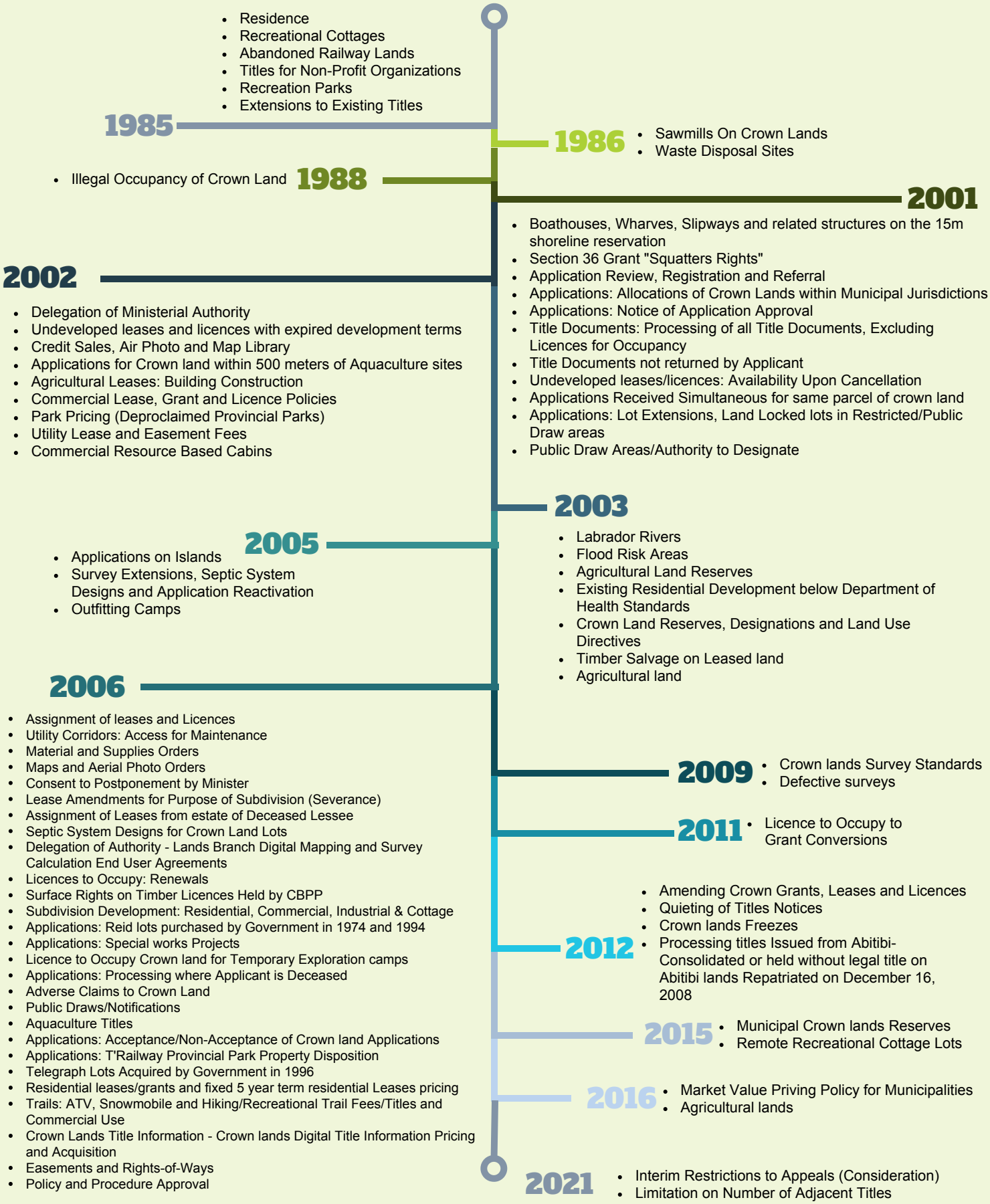
**Figure 1: Crown Lands Administration Policies - Years Since Update**




Source: prepared by the Office of the Auditor General based on information provided by the Department of Fisheries, Forestry and Agriculture.

**We found the majority of policy documents were approved and dated in 2006, and some were dated as far back as 1985.** A list of Crown lands administration policies and their respective year of approval is found in Figure 2.

# Figure 2: Age of Crown Lands Administration Policies




Source: prepared by the Office of the Auditor General based on information provided by the Department of Fisheries, Forestry and Agriculture.

**We found the Crown lands application processing manual (dated September 2010) did not reflect the current version of the records management system used to administer Crown lands.** We were provided with a more recently developed process document (dated 2019) that referenced the current records management system, however we found there was disagreement between the Crown Lands Division regions as to whether it was in use or not. **We also found there were no formally documented policies or procedures for transfers of Crown lands to provincial or federal departments or other government agencies.**

**We found the Crown Lands Division did not have an up-to-date policy for referrals,** even though Crown lands applications were often referred to other departments, such as the Department of Environment and Climate Change and the Office of Indigenous Affairs and Reconciliation. The referral step gave other departments or agencies, who had interest in an application or the use of the land and related resources, an opportunity for input on the approval or rejection of the application. The referral process also helped ensure the applicant applied for all required permits. Departmental officials indicated the referral step was a courtesy and it was not a legislative requirement. We were informed by department officials that two specific referral agencies, both outside the provincial government, never respond to referral requests, so applications were often processed without their responses.

**We found the application referral process was inconsistent across regions.** For example:

- Crown Lands Headquarters in Corner Brook indicated all applications should be referred to the Environmental Assessments Division of the Department of Environment and Climate Change, but the Eastern region indicated they only referred projects near salmon rivers or big projects to the Environmental Assessments Division.
- Central, Western and Labrador regions referred all applications to the Water Resource and Pollution Prevention Divisions, both of which are part of the Department of Environment and Climate Change, but Headquarters and Eastern region did not note these as being required.
- The Eastern region indicated they do not refer to a particular Federal department because they never receive a response, but other regions indicated they do still refer to that department.

**We found there were multiple versions of draft guidelines for referrals, one dated 2017 and another dated 2023. However, to date, neither have been officially approved for use by staff and we found differences in process steps between the various draft versions.** For example, we noted that versions differed in the requirement to have referrals for adverse possession, and other types of applications such as remote locations, cottage lots in planned areas, agriculture, and hiking trails.

We also found there was no formal policy in place related to land survey spot checks. When an application was approved, legislation required a land survey to be submitted to the Crown Lands Division to check the accuracy of the survey. Per job descriptions, land survey inspectors conduct physical spot checks of surveyed land to identify potential errors or omissions. However, **we found land survey spot checks were reportedly done for large projects such as cottage planning areas and large agriculture projects, but rarely done otherwise.**

**We found there were inconsistent processes across regions and subjectivity about how process steps were completed and documented**. For example, there were differences in who received applications, how 'departmental use only' information was recorded, the wording sent by regional offices to referral agencies, the process of drafting approval letters, and whether dated surveys would be accepted or not.

We were also provided with several informal process documents that were drafted in 2023 in response to audit requests – including:

- Complaints Management,
- Title Related Issues – Conflict over adverse possession,
- Monitoring or Inspecting Illegal Occupation (without Resource and Enforcement Division),
- Adverse Possession Application Review Process, and
- Application Screening (specific to Eastern Region only).

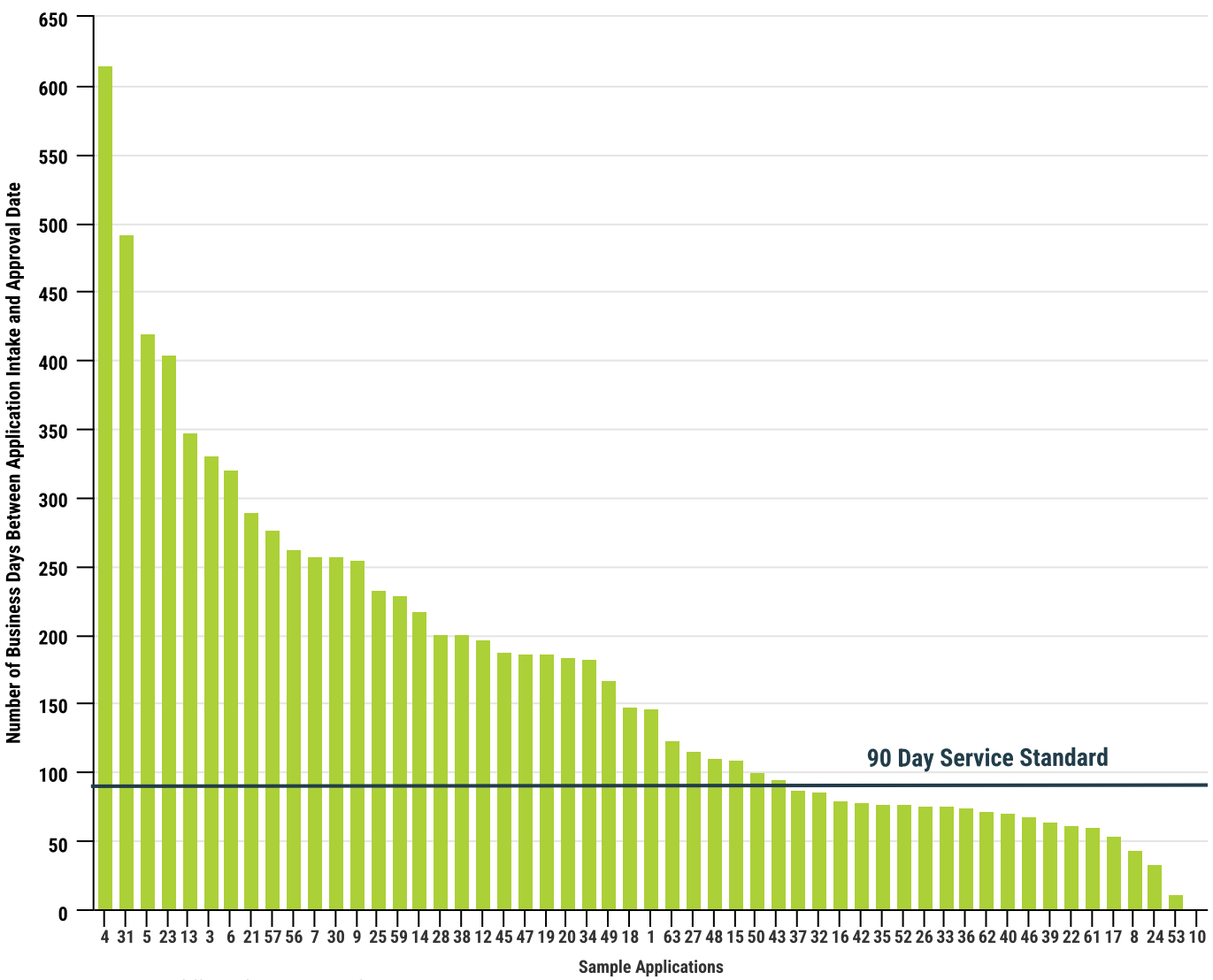
## Crown Lands Applications

We selected a very small sample of 63 applications from Crown Lands Division's records management system, which represented a small proportion, less than one per cent, of all application records. Our sample covered the various types of Crown lands applications and each regional office. Our audit conducted tests against legislative requirements and internal processes where possible.

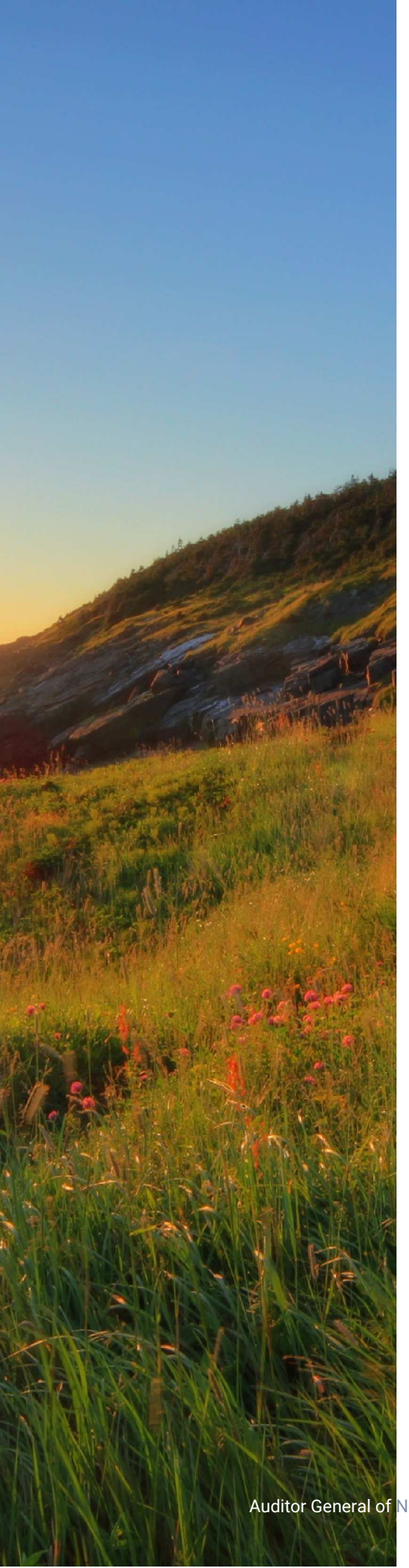
**We attempted to assess processing times for the population of applications from the records management system, however, we found the date information was inaccurate. Specifically, application information was often entered after receipt and/or processing,** and as a result we found dates were sometimes inaccurate and therefore not reliable for calculating processing times.

Instead, we conducted tests to assess processing times for our sample of 63 applications, by verifying date information from the source application documents. Ten of our 63 samples had not reached the point where we could assess processing times. **Of the remaining 53, we found 33 samples (62 per cent) did not meet the department's internal 90-business day processing standard for routine applications (as noted on their website). We found the average processing time for our sample of applications was 172 business days, with the longest being 615 business days.** To be clear, these application processing times do not include any time outside of the control of the department, i.e. waiting on client, but does include the referrals process. Figure 3 depicts the processing times of our test sample.

**Figure 3: Application Processing Time**




Source: Prepared by the Office of the Auditor General





**We found processing time was defined by the department as the period of time between the application submission date and the date the applicant received conditional approval or rejection from the Crown Lands Division. We found it did not include the number of days spent on subsequent steps, such as receiving and reviewing the survey, the land appraisal, the final review, and the title issuance.** This could result in a longer period of time before title was issued, meaning the applicant could not occupy the land.

We found 54 of our 63 samples reached the point of conditional approval. **We found 16 of these applications (30 per cent) had not been approved by the appropriate person when compared to the official 2002 Ministerial approval delegation policy,** which was the most recent finalized and issued policy regarding these approvals. **Department officials indicated they had been instructed by department executives in 2019 to follow a proposed Ministerial delegation of authority. However, department officials could not provide supporting evidence of this instruction.** We found the 2019 list was not finalized or issued. **We compared our testing samples to this proposed listing from 2019 and found there were seven applications (13 per cent) not approved by the appropriate person. These seven were included in the 16 that were not appropriately approved when compared to the 2002 delegation.**

We found several issues in the referral step of the application process. For example, **we found one of 63 application samples (two per cent) where a referral agency had refused the application but after discussions with the Deputy Minister of Fisheries, Forestry and Agriculture, the application was reopened and approved by the Crown Lands Division. We found another application (two per cent) where grant of land was approved by the Crown Lands Division, where a referral agency had given an initial refusal, and later changed their opinion despite not being able to issue the associated permit under the Water Resources Act.** We also found three instances (five per cent) where referral agency responses were missing. **We found one sample (two per cent) where the Crown Lands Division referral response stated, "Lands Management Officer response no longer required," but department officials could not give a reason why. This application was approved and issued with this comment made.**

**We found two out of three samples classified as commercial applications (67 per cent) had no support indicating the company having a status of good standing, yet the applications had been approved. We found the check for good standing in the registry of companies and deeds online was the only due diligence performed to verify the commercial applicant.**

We found ten of the 63 application samples (16 per cent) were missing supporting documents when we initially requested them, which were later located by department officials. We found two of 63 samples (three per cent) where supporting documentation for the application was stored in the wrong place in the records management system, making it difficult to locate.

## Government Transfers

We selected a sample of 35 government transfer applications, which represented approximately a third of all government transfer application records and conducted tests of legislative requirements and internal processes where possible. Government transfers are when the Crown Lands Division grants provincial or federal departments Crown lands.

We found there were transfers with both significantly long and significantly short processing times. **We also found there was no internal standard regarding processing times or survey response time for government to government transfers.** We found the average processing time for our sample of transfers was 155 business days. The maximum number of business days for a transfer application was 575 and the minimum number was eight. **We found 13 transfer applications (37 per cent) took over 150 business days to be processed,** and in 11 of these 13 (85 per cent), we found long processing times were due to delays in survey submissions. We found five of the 35 transfer application samples (14 per cent) were missing approval letters. Three of these five (60 per cent) had significantly shorter processing times, primarily due to all required documents being in good order when submitted.

## Why It Matters

It is necessary for the Department of Fisheries, Forestry and Agriculture's policies, procedures, and guidelines to be kept up to date with changes in legislation, direction, and technology to ensure the consistent and appropriate administration of Crown lands. Policy review is most effective when it is done regularly and proactively, not reactively. Development of policies, procedures, and guidelines should consider the complete role of the department with respect to the administration of Crown lands, including internal quality controls, the referral process, and transfers to other government departments. Clearly documented policy, procedures, and guidelines provide officials with guidance on how to perform their duties effectively, promoting consistency within the department while managing risk and reducing the opportunities for fraudulent activity, all with the public's best interest in mind.

Thorough policies, procedures, and guidelines also reduce subjectivity or influence from outside parties, or the effects of regionality. The lack of guidelines around application referrals also increases the chances of applications being approved for land that is of interest to other agencies, or applications being approved without proper permits being obtained.

Consistent and appropriate administration and documentation of applications would likely decrease application processing time and would lead to more effective and efficient referral agency selection - all of which would directly improve the overall process for Crown lands administration and better serve the people of the province.

# Findings - Enforcement

## Criteria 3

To determine whether the Department of Fisheries, Forestry and Agriculture monitors and inspects the use of Crown lands and enforces compliance with legislation, policies, and procedures.

## What We Expected

We expected the Department of Fisheries, Forestry and Agriculture had processes in place for enforcement, inspections, and monitoring to ensure Crown lands are used for their intended purposes. We expected related policies, procedures, and guidelines would be documented, aligned with legislation, and followed consistently across regions.

We expected the department had processes that were followed consistently across regions, to appropriately receive, triage, investigate, document, store, and resolve public complaints.

We expected the department would have the authority and resources to perform monitoring and enforcement requirements as outlined in the Lands Act.

## What We Learned

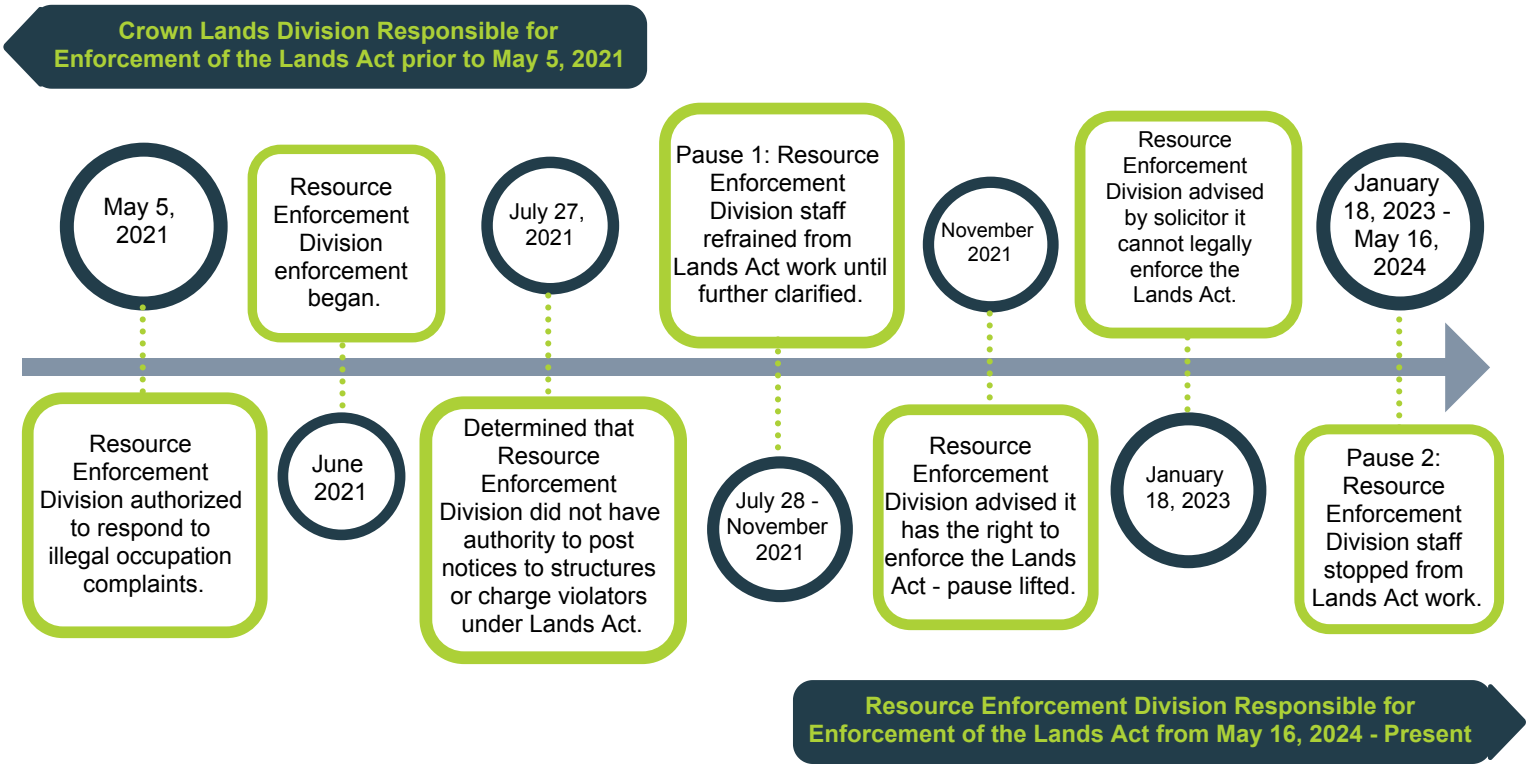
### Monitoring and Inspecting

**We found there were no formalized processes for the routine monitoring and inspecting of non-agricultural Crown lands to ensure the use of land adhered to application conditions.** The Act states that an authorized person may perform a land inspection to determine if the terms are being complied with. Officials indicated that monitoring and inspecting were mostly ad hoc and reactive, often driven by public complaints.

### Delegation of Responsibilities

**We found monitoring and enforcement activities were not appropriately delegated by the Minister, which resulted in confusion between divisions.** In May 2021, the responsibility for the monitoring and enforcement sections of the Lands Act were delegated to the department's Resource Enforcement Division. The Resource Enforcement Division were informed in July 2021 to stop any monitoring and enforcement activities related to Crown lands matters because it was determined by their legal advisors **the Resource Enforcement Division did not have the proper authorities required to legally enforce the Lands Act.** Subsequent to July 2021, there were multiple instances where the Resource Enforcement Division were told to stop and start monitoring and enforcement activities, including from January 2023 to May 2024. See Figure 4 for details.

## Figure 4: Crown Lands Enforcement Timeline




Source: Prepared by the Office of the Auditor General based on information provided by the Department of Fisheries, Forestry and Agriculture

Consequently, **we found there were periods of time since May 2021 that neither division believed they were responsible for monitoring, inspecting, and enforcement activities.** The Crown Lands Division was not officially informed until March 31, 2023, that the Resource Enforcement Division was not performing monitoring, inspection, and enforcement activities. The Crown Lands Division was aware that the Resource Enforcement Division was occasionally refusing to perform these activities due to legal limitations of the Lands Act. However, it was not officially made clear to the Crown Lands Division that the Resource Enforcement Division had totally paused enforcement activity in 2021 from July to November or from January 2023 to May 2024. We observed through our review of department communications that the public were often told by the Resource Enforcement Division to report complaints to Crown Lands Division and vice versa.

We found both divisions were receiving and documenting complaints with the intention to action them when the Resource Enforcement Division was appropriately authorized. **We also found there were instances when the Resource Enforcement Division thought it was responsible for inspecting, monitoring, and enforcement activities but was not actually legally able to perform these activities; as a result unauthorized actions were taken, for example, invalid stop orders were issued.**

### Complaints and Enforcement

**We found there were no formal policies or procedures for handling public complaints within the Crown Lands Division.** When asked for a documented policy, Crown Lands Division officials provided a drafted procedure document. We found the Crown Lands Division did not have a centralized tracking mechanism for complaints, instead they were handled regionally. For example, the Central region used spreadsheet software to record and track complaints, the Eastern region used functions of the records management system, and Western and Labrador region used both systems.

**We found the Resource Enforcement Division also did not have a centralized formal process for handling complaints.** Each region saved Crown lands complaint forms and related information in folders mixed with non-Crown lands complaints and did not summarize them in a centralized listing.

**We found there was no consistent guidance provided to Crown Lands Division regions about transferring complaints to the Resource Enforcement Division for action.** Resource Enforcement Division officials indicated they relied on Crown Lands Division staff to forward relevant complaint information. The Eastern and Western and Labrador regions stored complaints electronically in a shared folder for such a time when the Resource Enforcement Division was able to action them. Western and Labrador region also continued to action some complaints themselves. The Central region indicated it was selective about which complaints it sent to the Resource Enforcement Division and also sometimes continued to action items, but otherwise forwarded information to the Resource Enforcement Division and kept track of what was forwarded on a spreadsheet.

We selected a sample of 36 complaints from the Resource Enforcement Division's records for review. **We found in 23 of the 36 complaints sampled (64 per cent), there was no evidence of any action taken by the department.** Four of these 23 complaints (11 per cent) were missing complaint forms which were used to document and track all complaints received and any actions taken to resolve the complaint.

For eight of the 23 complaints without action (35 per cent), the Resource Enforcement Division indicated it had requested the Crown Lands Division to action the complaints. However, when we inquired with the Crown Lands Division, they were unaware of the current status. We found five of these eight (63 per cent) were received while the Resource Enforcement Division was responsible for enforcement and three (37 per cent) were not. This is consistent with our understanding of the confusion regarding responsibilities between divisions.

**Of the 32 samples with documented complaint forms, we found 27 (84 per cent) contained clerical errors or missing information** such as, office location, "action to be taken on or before," signature, and/or dates missing. In addition, we found there were five complaints from 2021 that still had not been actioned.

**We found there were no formalized enforcement policies, procedures, or processes and minimal enforcement was performed during our scope period.** The Lands Act gives authority to the Minister to enforce the removal of illegal structures and the use of stop orders. **Even though the department had authority through the Lands Act, we found it did not attempt to remove illegal structures occupying Crown lands,** instead, the department would give notice to the occupier to remove them. **We found the department also did not enforce removal of illegal structures when the occupier did not comply.**

We examined 36 samples to determine if enforcement was performed. We found eight of the 36 complaints (22 per cent) had 30-day removal notices or stop orders issued by either the Resource Enforcement Division or the Crown Lands Division. However, **we found in four of these eight (50 per cent) there was nothing to indicate they were followed up on to see if the structure had been removed.** In one of these four samples (25 per cent), the Crown Lands Division did not follow up on a removal notice because the land was located on a remote island and they did not have a boat that could be used for sea travel.

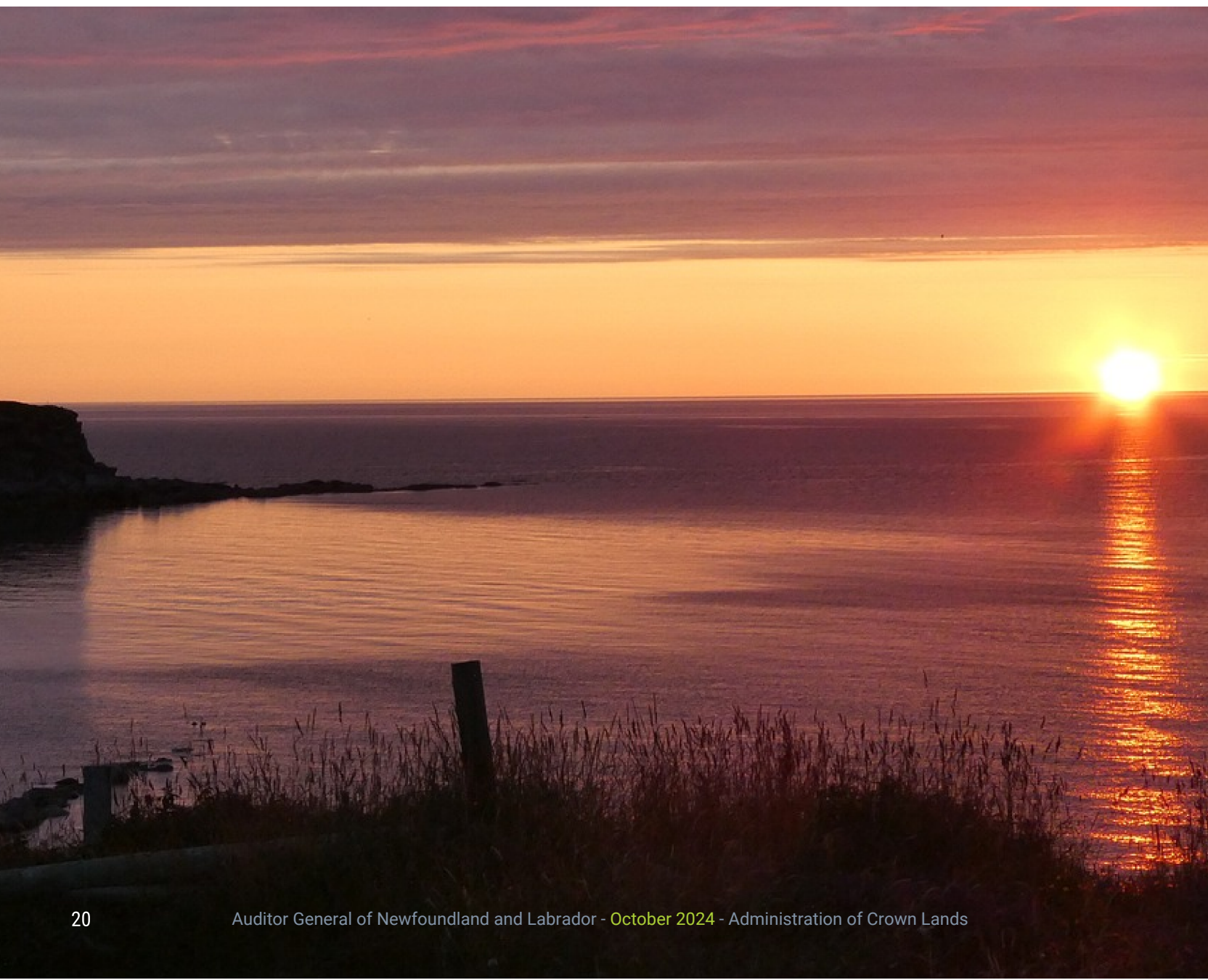
**Illegal occupancy of Crown lands continues to be an issue due to the lack of proactive monitoring, inspection, and enforcement.** The department instead applied illegal occupation fees only when an applicant applied for Crown land after they had already been using the land. We found the Crown Lands Division issued 1,366 illegal occupation fees totalling $1.4 million during the scope period. Further, we also found that once an illegal occupation fee was issued, if the applicant cancelled the application then the department did not collect the fee. **In other words, the division could only charge the fee if the individual applied for the land they had been unlawfully occupying, and if that individual then decided to cancel their application they would no longer have to pay the fee.**

## Why It Matters

Monitoring, inspection, and enforcement are critical to the effectiveness of Crown lands administration in the province. Without these activities, members of the public can unlawfully use Crown lands without fear of being penalized in accordance with the Act.

Unauthorized use or misuse of Crown lands could potentially lead to environmental damage to surrounding areas and bodies of water. It can also pose safety concerns, such as when structures are illegally erected on Crown lands. Unauthorized use could also make it so that Crown land is not readily available for use by government departments and agencies which could significantly impact, or delay planned or emergency work.

Complaints serve as an important source for enforcement and are one of the only ways for the public to reach the department to raise concerns related to Crown lands. The lack of consistent complaint policies and processes may result in missed opportunities to identify and manage improper Crown lands use. It could also negatively impact the public’s perception of the department's attitude toward enforcement. The lack of complaints handling and enforcement may also lead to individuals taking matters into their own hands if they do not feel that their concerns are being addressed, or ignoring the law altogether.



# Findings - Monitoring & Oversight

Criteria 4

To determine whether the Department of Fisheries, Forestry and Agriculture has effective monitoring and oversight processes in place related to Crown lands.

## What We Expected

We expected the Department of Fisheries, Forestry and Agriculture would have established oversight processes for its divisions, and that key performance indicators were clearly defined and regularly reported. We expected internal quality control and risk management processes would be well-designed, formalized, and implemented. We expected land value appraisal working papers would be well supported and reviewed, and that land value appraisals were required for grants and commercial leases to calculate the market value of land.

## What We Learned

**We found informal and inconsistent oversight processes across Crown Lands Division regions.** Department officials indicated they met regularly with regions but were unable to provide meeting minutes, and provided supporting evidence of only four province-wide management meetings occurring throughout our audit scope period of 45 months. We also found the department did not have a risk register or procedures related to risk management for Crown lands administration other than the annual fraud risk assessment tool.

Also, **we found key performance indicators, including reporting requirements, were not clearly defined.** We received contradicting information where some department officials indicated the 90-business day service standard for application processing was an established key performance indicator. However, other department officials indicated that it was not possible to track application processing times. We note that this is a public service standard.

**We found there was no formal monitoring or quality control processes pertaining to the administration of Crown lands.** We found different informal monitoring processes existed in some regions. For example, in the Western and Labrador region, regular meetings were held to discuss application process issues and concerns, but these regularly scheduled meetings did not occur in the other regions. Department officials indicated they performed regular spot checks using the records management system dashboard to identify errors before the issuance of the titles. However, they had no mechanism to retain evidence of these spot checks and they were unable to provide supporting evidence to confirm these spot checks were actually performed.

**We found there was only one individual performing lands value appraisals in the Crown Lands Division. We found there was no established review process, and no other person performed or regularly reviewed the appraisal work.** We also found working papers used to document the Lands Value Appraiser's value calculations did not show detailed workings of appraisals and reappraisals, and typically only linked to market values in the area, and sometimes no support was evident at all. During the course of our audit, we were contacted by an individual who had a title letter from the Crown Lands Division that contained a $56,925 overstatement of grant value. We observed an instance where a title letter contained a $56,925 overstatement of grant value; and the error was corrected based on an inquiry from the applicant. We found Crown Lands Division did not have a copy of this letter within the records management system, but did however have a record of the corrected letter.

## Why It Matters

Consistent and effective oversight is critical to ensuring the department's goals and objectives are being achieved. Key performance indicators are a mechanism for reporting divisional initiatives to the department. A lack of clear key performance indicators means the division has no way to assess how well it is meeting its objectives and service standards and may lead to significant issues going unnoticed.

Well-designed and implemented Crown lands internal quality control processes are key to the fair and consistent administration of all applicants across the province. Without these, the process may be vulnerable to risk of errors, outside influence, inefficiencies, or susceptible to fraud. Specifically, this is evident in the lack of documented value appraisal procedures, appraisal documentation, and detailed review of appraisals combined with the lack of segregation of duties of appraisal preparers. This may result in subjective, unsupported appraisal values that can either cost the applicant too much or result in the province not receiving fair market value of the land.

# Subsequent Events

On May 16, 2024, an operational directive was circulated within the Resource Enforcement Division which enabled them to legally enforce certain sections of the Lands Act by providing the division with the appropriate authority under the Criminal Code of Canada.

On October 15, 2024, the Department of Fisheries, Forestry and Agriculture announced amendments to the Lands Act planned for the fall sitting of the House of Assembly. Changes include amendments that better support title seekers trying to acquire legal ownership of Crown Lands based on adverse possession – commonly referred to as “squatter’s rights.”

# Conclusions

We have serious concerns with the Department of Fisheries, Forestry and Agriculture's ability to effectively manage the administration of Crown lands. Systemic issues may have created opportunities for the misuse of, or allowed for, the extended illegal occupation of Crown lands - which may have also contributed to public safety risks; negative environmental impacts; strains on the province's court system; and affected the well-being of land owners. As a result,  this may have prevented the province's residents from realizing intended social and economic benefits of Crown lands as intended.

The public expects government programs to operate in a manner that ensures equality and fairness to potential users and that intended outcomes are achieved. The foundation of Crown lands administration in Newfoundland and Labrador has been built on incomplete and outdated records, as well as inconsistent, informal and incomplete policies and procedures. The department did not ensure consistent processes were followed between regions; lacked effective monitoring and enforcement; and performed very little in the way of formal oversight of its divisions. Key performance indicators and risk management processes were not formally documented or clearly defined, and reporting of performance at any level was ad hoc at best. With these significant shortcomings, it is nearly impossible to have achieved the desired results of the program.

Outdated, inconsistent, informal, and incomplete policies and procedures may have also increased opportunities for conflicts of interest and the risk of fraud. Due to these gaps in governance, we were unable to confirm or deny the existence of fraud. For example, an unofficial delegation of authority for Crown land approvals had been in use for multiple years, which increased the risk of unauthorized processing and approval of Crown land applications and transfers.

The Department of Fisheries, Forestry and Agriculture did not work with other departments to address known issues with land systems, including the lack of mandatory registration and an incomplete listing or mapping inventory of all provincial Crown lands. These longstanding issues may have supported a continued disconnect between what the public and government understands Crown lands to be. These issues may have also resulted in public frustration and the unnecessary use of resources as it relates to Crown lands administration.

The department did not carry out responsibilities related to monitoring, inspections, and enforcement effectively. The department had no formal policy, procedures, or guidance relating to complaints management, enforcement, and inspections. The inconsistent handling of complaints and general lack of action is a considerable concern given public complaints were often the primary source for monitoring and enforcement activities. Enforcement responsibilities delegated by the Minister were also poorly communicated within the department and virtually no enforcement activities were performed during the scope of our audit; all of which could have indirectly promoted the illegal use and occupation of Crown lands.

# Recommendations

## Recommendation 1

We recommend the Department of Fisheries, Forestry and Agriculture update and implement formal policies, procedures, and internally developed process documents relating to the administration of Crown lands and related enforcement activities. Once formalized, they should also be regularly reviewed and communicated to all relevant personnel across all regions.

**Department Response:** The department accepts the recommendation and advises that the Department is reviewing all formal policies, procedures and internally developed process documents relating to the administration of Crown lands and enforcement and is adjusting or eliminating policies as may be appropriate based on its review. The Department accepts that for policies to be effective, they will require regular review and must be communicated appropriately.

## Recommendation 2

We recommend the Department of Fisheries, Forestry and Agriculture adopt formal oversight processes, including risk management processes, related to the administration of Crown Lands.

**Department Response:** The department accepts the recommendation to adopt a formal oversight process, including improved risk management processes.

## Recommendation 3

We recommend the Department of Fisheries, Forestry and Agriculture, in consultation with other departments as needed, address the issues identified in this audit with respect to land systems, including registration and titles management.

**Department Response:** The department accepts the recommendation. While the ability to deliver a mandatory titles-based registration system is beyond the Department of Fisheries, Forestry and Agriculture, the department recognizes the important role that it plays in land administration and will continue its ongoing work with the Department of Digital Government and Service NL, the Department of Justice and Public Safety and other stakeholders as needed to address the issues identified in the audit with respect to land systems, land registration and titles management.

## Recommendation 4

We recommend the Department of Fisheries, Forestry and Agriculture address the issues identified in this audit with respect to the accuracy of public information regarding available crown land.

**Department Response:** The department accepts the recommendation. The Department is committed to providing as accurate information as possible and will continue to update its mapping inventory as work towards the delivery of titles-based land registration system moves forward and will continue to make improvements to its own mapping and registry tools related to Crown titles to ensure a system that is as complete and accurate as possible.

# Appendix - About This Audit

## Why this Audit is Important

Crown land covers approximately 88 per cent of Newfoundland and Labrador. These lands are administered by the Minister of Fisheries, Forestry and Agriculture for the social and economic benefit of Newfoundlanders and Labradorians. The Department of Fisheries, Forestry and Agriculture's Crown Lands Division receives approximately 3600 applications per year, and provides a range of uses including recreation, economic development, conservation, agricultural use, and other services. It is essential for the department to effectively manage the administration of Crown lands to benefit the people of the province.

## Objective

The objective of our audit was to determine whether the Department of Fisheries, Forestry and Agriculture effectively manages the administration of Crown lands.

## Criteria

The Office of the Auditor General developed criteria based on discussions with Crown lands management; review of relevant documentation, legislation, government policies and procedures; and reviews of literature including reports of other legislative auditors. The Office of the Auditor General defined four criteria regarding the objective. The Department representatives accepted the criteria as suitable.

The Office of the Auditor General assessed whether the Department of Fisheries, Forestry and Agriculture managed the administration of Crown lands against the following criteria:

1. The department has a process in place that allows them to account for and track Crown lands.
2. The department allocates Crown lands in accordance with legislation and policies and procedures.
3. The department monitors and inspects the use of Crown lands and enforces compliance with legislation and policies and procedures.
4. The department has effective monitoring and oversight processes in place related to Crown lands.

## Scope and Approach

Our audit began in May 2023 and covered the period April 1, 2020, to December 31, 2023. It examined whether the Department of Fisheries, Forestry and Agriculture effectively managed the administration of Crown lands as defined by the Lands Act.

We conducted our audit using a risk-based approach based on our understanding of the responsibilities, systems, risk factors and activities of the Department of Fisheries, Forestry and Agriculture as they relate to the effective management of the administration of Crown lands.

Our audit procedures included informal interviews with selected department officials and a review of relevant legislation, regulations, documented policies and procedures related to the administration of Crown lands. Our audit procedures also included an examination of information contained in the electronic records management system, the Geographic Information System, and the Land Use Atlas. Our procedures also included detailed examination of complaints information, inspection records, application information and records related to the transfer of lands to other departments or to the federal government. We also reviewed monitoring and enforcement documentation and oversight procedures and documentation. We also considered jurisdictional comparisons where appropriate.

We did not include non-digitized records from the vault in our population as this would have taken a considerable amount of time and most, if not all, records would have been much older than our scope period.

We did not perform testing of agricultural lease inspections due to the low number of issued agricultural leases within our scope period. We also did not perform testing of non-agricultural lease inspections because the client confirmed that inspections were not often performed on these types of leases.

## Audit Standards

This independent assurance report was prepared by the Office of the Auditor General of Newfoundland and Labrador for auditing the Department of Fisheries, Forestry and Agriculture's administration of Crown lands through our audit objective and criteria. Our responsibility was to independently audit these areas to provide objective information and recommendations. The senior management of the Department of Fisheries, Forestry and Agriculture acknowledged their responsibility for the audit subject matter and the terms of the audit, including audit objective, scope, and approach.

This audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada and under the authority of the Auditor General Act, 2021.

The Office applies the Canadian Standard on Quality Management. This standard requires our Office to design, implement, and operate a system of quality management, including policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of the Association of Chartered Professional Accountants of Newfoundland and Labrador.

## Management Representations

The Deputy Minister of the Department of Fisheries, Forestry and Agriculture confirmed that senior management had provided the Office of the Auditor General with all the information they were aware of that had been requested or that could significantly affect the findings or conclusions of the audit report.

## Date Conclusion Reached

We obtained sufficient and appropriate audit evidence on which to base our conclusions on October 17, 2024 in St. John's, Newfoundland and Labrador.

**DENISE HANRAHAN, CPA, CMA, MBA, ICD.D**
**Auditor General**

# About Us

## Vision
Promoting positive change and accountability in the public sector through impactful audits.

## Mission
To promote accountability in government's management and use of public resources and encourage positive change in its delivery of programs and services.

## Values
Above all else, the Office of the Auditor General must have independence, credibility and integrity. These are essential to everything we do; and critical to our success. The Office of the Auditor General complies with professional and office standards to produce relevant and reliable audit reports. The Office of the Auditor General's independence of government, in fact, and in appearance, provides objective conclusions, opinions and recommendations on the operations of government and crown agencies. Our staff work in a professional and ethical manner, ensuring respect, objectivity, trust, honesty and fairness.

## OAG Team
The Auditor General and Deputy Auditor General wish to thank the diligent team who performed their work with independence, credibility and integrity:

Lindy Stanley, CPA, CA - Assistant Auditor General
Adam Lippa CPA, CMA, CISA, CISM - Audit Principal
Amanda Griffiths CPA - Audit Manager
Sujin Gu, CPA – Audit Senior
Andrea Gunn - Audit Senior
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The Auditor General also would like to thank Chrysta Collins, Manager of Communications and Stakeholder Engagement, for report editing and design, as well as stakeholder management.

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