



Connecticut Department of  
**ENERGY &  
ENVIRONMENTAL  
PROTECTION**

**STATE OF CONNECTICUT  
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

Public Hearing – February 22, 2012  
Environment Committee

Testimony Submitted by Commissioner Daniel Esty  
Presented By Deputy Commissioner Macky McCleary

**Raised House Bill No. 5127 – AN ACT DEFINING THE HIGH TIDE LINE FOR THE TIDAL, COASTAL AND NAVIGABLE WATERS OF THE STATE**

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5127 - Defining the High Tide Line for the Tidal, Coastal and Navigable Waters of the State. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

We appreciate the Committee's willingness to raise this bill at the request of DEEP. This proposal, which we strongly support, would redefine the statutory jurisdiction line for coastal structures, dredging and fill permits from a field-determined process to a fixed elevation for each town. The goal of the proposal is to establish jurisdictional certainty for the regulated community, which will help to streamline the coastal permitting process without significantly changing the extent of coastal areas subject to regulation. In addition, the proposal would allow updating the jurisdictional elevation to account for future sea level rise.

The "high tide line" (HTL) is defined by CGS §22a-359(c) as the landward limit of the state's coastal regulatory jurisdiction for structures, dredging and fill activities. As such, it is critical for both the agency and the regulated community to be able to locate this jurisdictional line with certainty in the field in a fluid and dynamic environment. The current statutory language defines HTL as a mark indicating the maximum height reached by a rising tide, as established by observations of a range of possible field evidence or data. Given the number of alternative methods specified in statute, and the dynamic nature of the coastal environment, the range of HTL determinations has varied widely in some cases, even between professional practitioners. Such confusion has resulted in regulatory delays stemming from the amount of time and effort required for applicants to properly perform a HTL determination, and necessary field assistance and compliance checks by agency analysts. The lack of certainty regarding the HTL boundary also has specifically led to a number of protracted enforcement cases brought by DEEP which may have been avoided with a more clearly defined regulatory boundary set in statute.

Crafting a more specific regulatory definition was made more difficult because there is no fixed elevation or published tidal datum that exactly corresponds to the current statutory definition, since the term "high tide line" has no particular geological or scientific significance. Accordingly, our goal was not

to determine a “true” high tide line, but to agree on a simple jurisdictional concept that will capture all activities that can reasonably be expected to affect coastal resources and uses without creating undue regulatory burdens or uncertainty. While nearby states such as Rhode Island and New Jersey regulate within a substantial buffer or setback from tidal waters or resources to ensure adequate resource protection, the Department sought to develop a simple methodology that would not either expand or diminish agency jurisdiction.

The Department’s approach to addressing this issue was based on a proposal introduced last year by the Connecticut Association of Land Surveyors (CALs). CALs, whose members are often asked to determine and field-locate the HTL, sought a jurisdictional clarification to provide certainty to its professional members and ease in determining the regulatory jurisdiction on-site. CALs members conducted a number of surveys and analyses of the HTL and worked closely DEEP staff to reach an agreement on appropriate language that would provide regulatory certainty without significantly changing the extent of regulated area. The proposed approach establishes HTL elevations tied to the highest predicted tide between 1983-2000 as referenced to the latest approved NOAA tidal epoch, and specifies in statutory language the elevation for each coastal town. The proposed language utilizes NOAA tidal data and field verification by CALs, to provide exact HTL elevations for each coastal town. These elevations may be adjusted in the future to conform to documented changes in sea level. Field verification conducted jointly by CALs and DEEP staff during the past year has confirmed that the proposed regulatory boundary closely mirrors the HTL currently utilized by coastal permit applicants using site-specific coastal resources and the marks left by the intersection of the tide with the land. The agency expects little change in the coastal area currently subject to DEEP regulation pursuant to CGS 22a-361, thereby also ensuring continued protection of coastal resources without affecting waterfront property rights or increasing regulatory responsibilities.

The proposal also adds clarifications to codify existing regulatory practice with regard to areas upstream of tidegates and up tidally influenced rivers. For areas where tidal flow is restricted or attenuated upstream of tidegates and other tidal control structures, DEEP staff have found that the elevation of Mean High Water, which is lower than the HTL, is an appropriate approximation of the extent of tidal flow. Finally, new subparagraph 22a-359(d) defines “tidal, coastal or navigable waters of the state” to conform to existing practice, clarifying that inland waterbodies with no direct navigational connection to Long Island Sound are not regulated under the structures and dredging statutes.

In summary, the Department would like to thank CALs for their valuable contributions of effort and expertise in developing this proposal, and would urge the Committee to support this alternative to the existing statutory definition which will provide regulatory certainty, while continuing to protect valuable coastal resources.

Thank you for the opportunity to present the Department’s views on this proposal. If you should require any additional information, please contact the Department’s legislative liaison, Robert LaFrance, at (860) 424-3401 or [Robert.LaFrance@ct.gov](mailto:Robert.LaFrance@ct.gov) .