



# Legislation & Water Governance

Healthy rivers don't happen by accident. Behind every protected watershed and every restored stream is a framework of **laws, policies, and governance structures** that define who is responsible, what is allowed, and how conflicts are resolved. Understanding this framework is essential for Envirothon — and for citizenship.

## 1. Who owns water in Canada?

Water governance in Canada is shared — and often complex. Under the Constitution Act, 1867, provinces own the water resources within their boundaries and have broad authority over water management. However, the federal government has specific powers that also apply to water, particularly around fisheries, navigation, and international relations.

In practice, this means most water decisions in New Brunswick are made at the provincial level, but federal law applies when it comes to protecting fish habitat, managing species at risk, and governing transboundary or international waters.

Level of government	Water-related jurisdiction
<b>Provincial (NB)</b>	Owns water resources; manages water allocation, drinking water, wetlands, watercourses, land use planning near water, most inland water quality and quantity.
<b>Federal</b>	Fisheries and fish habitat (Fisheries Act); navigation; species at risk; transboundary and international waters; federal lands and First Nations reserves; pollution prevention (Canadian Environmental Protection Act).
<b>Municipal / local</b>	Local land use planning; stormwater management; some drinking water systems; enforcement of local bylaws near watercourses.
<b>Indigenous governments</b>	Aboriginal and treaty rights related to water, especially for traditional fisheries, cultural practices, and lands. Rights recognized under s.35 of the Constitution Act, 1982.
<b>Joint / shared</b>	Many issues require federal-provincial cooperation. The Canada Water Act (1970) provides the framework for federal-provincial water management agreements.

### THE KEY CONSTITUTIONAL REALITY

The Constitution Act, 1867 does not explicitly assign jurisdiction over 'water' or 'the environment' to either level of government. As a result, both federal and provincial governments have enacted water legislation that sometimes overlaps. The practical outcome: in NB, most day-to-day water regulation is provincial, but federal law provides a floor of protection for fish, habitat, and species at risk that applies across the country.

## 2. New Brunswick provincial legislation

New Brunswick has developed a comprehensive suite of provincial water legislation since the late 1980s. The centrepiece is the Clean Water Act (1989), but several related Acts and regulations also govern specific aspects of water management.

### Clean Water Act (1989) — NB's primary water law

The Clean Water Act is the foundation of water protection in New Brunswick. Assented in 1989 and amended multiple times since (most recently in 2025), it governs a wide range of activities that could affect surface water, groundwater, and wetlands.

Key provisions under the Clean Water Act include:

- Watercourse and Wetland Alteration Regulation (WAWA, NB Reg. 90-80) — requires permits for activities within 30 m of any watercourse or wetland
- Watershed Protected Areas Designation Orders (2001) — designated protection for all 29 watersheds supplying drinking water to NB local governments
- Water Classification Regulation (2002) — intended to establish water quality objectives by watershed; not yet fully implemented
- Potable Water Regulation (1993) — standards for drinking water quality
- Water Well Regulation (2002) — controls well drilling and groundwater protection

#### WAWA — THE REGULATION STUDENTS ENCOUNTER MOST OFTEN

The Watercourse and Wetland Alteration Regulation (NB Reg. 90-80) is the most practically important piece of water legislation for landowners, developers, farmers, and foresters in NB.

**Core rule:** Any person working in or within **30 metres** of a watercourse or wetland must obtain a WAWA permit before starting work.

**Two permit types:** (1) Provisional permit — low-risk activities, up to 10 days processing; (2) Standard permit — higher-risk projects, up to 8 weeks. All applications can be submitted online through the NB DELG.

**2025 update:** The WAWA regulation was amended again in 2025 (c.24, s.8), reflecting continuing refinement of NB's water protection framework.

### Clean Environment Act (1973) — pollution control

The Clean Environment Act (1973) regulates pollution of the environment including water. The Water Quality Regulation (1982) under this Act prohibits, without a permit, the pollution of any waters in the province. It works alongside the Clean Water Act to control discharges from industrial and municipal sources.

### NB Wetlands Conservation Policy (2002)

The NB Wetlands Conservation Policy establishes the principle of no net loss of Provincially Significant Wetland (PSW) habitat, and no net loss of wetland function for all other regulated wetlands. It is implemented through the WAWA permit process. Key elements:

Policy element	What it means in practice
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<b>No net loss (PSW)</b>	Provincially Significant Wetlands cannot be altered or destroyed under any circumstances.
<b>No net loss (other wetlands)</b>	Wetlands > 1 hectare or connected to a watercourse: if unavoidable alteration is approved, compensation wetland must be created or restored elsewhere.
<b>Avoidance first</b>	Applicants must demonstrate all feasible avoidance and minimization measures were considered before compensation is permitted.
<b>Provincially Significant Wetlands</b>	Identified using 7 criteria (ecological, hydrological, social). All coastal wetlands are automatically PSW.
<b>2020 mapping update</b>	All wetlands are now protected based on field presence, not just mapping. The WAWA Reference Map on GeoNB is for reference only.

### NB Water Strategy 2018–2028

NB's Water Strategy, published by the Department of Environment and Local Government in December 2017, provides the overarching policy framework for the province's 10-year water management agenda. Vision: 'New Brunswick's water will be protected and managed to ensure its quality and availability for future generations.'

Goal	Focus area	Key actions
1	Understanding and sharing knowledge	Report on water quality in NB lakes and rivers; expand monitoring; open data portal
2	Protecting drinking water	Report on drinking water quality for all NB communities; strengthen wellfield protection
3	Preserving ecosystem health	Watershed-based management approach; improve wetland mapping; recreational water monitoring
4	Working cooperatively	Collaborate with watershed groups, lake associations, First Nations, academia
5	Reporting progress	Annual progress reports; strategy review within 5 years

## 3. Federal legislation

While provinces manage water day-to-day, several federal laws provide critical baseline protections that apply across Canada. Envirothon students should know the three most important for aquatic ecosystems.

### Fisheries Act — Canada's oldest and strongest aquatic protection

First enacted in 1868 and administered by Fisheries and Oceans Canada (DFO), the Fisheries Act remains Canada's most powerful piece of water quality legislation for aquatic ecosystems. Its reach extends far beyond fisheries management.

Key provision	What it means
<b>Section 35 — Harmful alteration, disruption, or destruction (HADD) of fish habitat</b>	It is an offence to alter fish habitat in a harmful way. Any project near water that could affect fish habitat requires DFO review and possibly a Fisheries Act authorization.
<b>Section 36 — Deposit of deleterious substances</b>	It is an offence to deposit any harmful substance into water frequented by fish, or in any place where it could reach such water. This is the provision that applies to most pollution incidents.
<b>Penalties</b>	Up to \$1 million in fines for corporations; up to \$250,000 for individuals; possible jail terms and remediation orders. Among the strongest environmental penalties in Canadian law.
<b>Relevance to NPS</b>	Agricultural runoff, forestry sedimentation, and urban stormwater that harm fish habitat or deposit harmful substances could all be offences under the Fisheries Act — even if they are NPS.

#### WHY THE FISHERIES ACT MATTERS BEYOND FISH

The prohibition on depositing 'deleterious substances' (Section 36) is one of Canada's broadest environmental protection provisions. It covers pesticides, nutrients, sediment, and any other harmful material that reaches water frequented by fish — which includes most NB rivers, streams, and lakes. The Act does not require proof of actual harm to fish; depositing a harmful substance is the offence. This makes it a potentially powerful tool against serious NPS events.

### Species at Risk Act (SARA, 2002)

The Species at Risk Act provides legal protection for species designated as Extirpated, Endangered, or Threatened under Schedule 1 of the Act. For aquatic species and migratory birds, it applies across Canada — not just on federal land.

SARA element	How it works
<b>COSEWIC assessments</b>	The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) independently assesses species status. Assessments are listed as: Not at Risk, Special Concern, Threatened, Endangered, or Extirpated.
<b>Schedule 1 listing</b>	After COSEWIC assessment, the Governor in Council decides whether to list the species on Schedule 1 of SARA — the legal protection list. This decision can be delayed for political or economic reasons (a known weakness of the Act).
<b>General prohibitions</b>	For listed Endangered or Threatened species: it is an offence to kill, harm, harass, or destroy the residence of an individual of that species.
<b>Critical habitat</b>	Recovery strategies must identify critical habitat. Once identified and protected, activities that damage critical habitat are prohibited.
<b>NB examples</b>	Brook Floater and Yellow Lampmussel (freshwater mussels): Special Concern. Atlantic salmon (inner Bay of Fundy population): Endangered. Dwarf Wedgemussel: Extirpated from NB.

## Canadian Environmental Protection Act (CEPA, 1999)

CEPA is Canada's main pollution prevention law, administered jointly by Environment and Climate Change Canada and Health Canada. It identifies, assesses, and controls toxic substances throughout their life cycle. For water quality, CEPA regulates phosphates in detergents, ocean dumping, and controls nutrients and other substances that could harm aquatic ecosystems.

## Canada Water Act (1970) and the Canada Water Agency (2024)

**The Canada Water Act (1970)** provides the enabling framework for federal-provincial water management cooperation. It authorizes agreements, joint programs, and data sharing between levels of government.

### CANADA WATER AGENCY — LAUNCHED OCTOBER 15, 2024

The Canada Water Agency Act came into force on **October 15, 2024**, establishing the Canada Water Agency as a standalone federal agency — the first new federal water agency in decades.

**Mandate:** To improve freshwater management in Canada by providing leadership, effective federal collaboration, and improved coordination with provinces, territories, and Indigenous peoples to address national and regional transboundary freshwater challenges.

The Wolastoq (Saint John River) **is one of eight waterbodies of national significance** in Canada's Freshwater Action Plan — directly relevant to NB students. The \$2.3M invested in the Wolastoq watershed in February 2026 flows from this framework.

**Canada Water Act review:** The Agency began pre-engagement on reviewing and modernizing the Canada Water Act in 2025 — the first comprehensive review in over 50 years.

## 4. Key federal legislation summary

Act	Administered by	Aquatic relevance
<b>Fisheries Act (1868, updated)</b>	DFO	Prohibits HADD of fish habitat; prohibits deleterious substance deposits. Canada's most powerful water protection tool.
<b>Species at Risk Act (2002)</b>	DFO (aquatic); ECCC (others)	Legal protection for listed aquatic species. Recovery strategies and critical habitat protection.
<b>Canadian Environmental Protection Act (1999)</b>	ECCC + Health Canada	Controls toxic substances; regulates phosphates, ocean dumping, and other water pollutants.
<b>Canada Water Act (1970)</b>	ECCC / Canada Water Agency	Framework for federal-provincial water cooperation. Annual reporting to Parliament.
<b>Canada Water Agency Act (2024)</b>	Canada Water Agency	Establishes standalone agency for national freshwater leadership. Wolastoq/SJR is a priority waterbody.
<b>Impact Assessment Act (2019)</b>	IAAC	Requires environmental assessment for major projects affecting water — replaced CEAA 2012.
<b>International Boundary Waters Treaty Act</b>	Global Affairs Canada	Implements 1909 Treaty with USA; governs Great Lakes and transboundary waters; International Joint Commission.

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## 5. Indigenous rights and water governance

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Indigenous peoples in Canada have a profound and legally recognized relationship with water that predates and exists alongside provincial and federal water law. Understanding this dimension of water governance is essential for Envirothon students.

### Constitutional recognition

**Section 35 of the Constitution Act, 1982** recognizes and affirms existing Aboriginal and treaty rights. This includes rights related to water — particularly traditional fisheries, cultural practices, and the use of lands and waters within treaty territories. These rights must be meaningfully consulted and accommodated before governments can take actions that might affect them.

### UNDRIP and water

**The United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP Act, 2021)** came into force in Canada in 2021, requiring the Government of Canada to ensure laws are consistent with the Declaration. UNDRIP includes provisions on Indigenous peoples' rights to water and the protection of their water-related territories and resources.

### Wolastoqey and Mi'kmaq water rights in NB

In New Brunswick, the Wolastoqey Nation (Maliseet) and Mi'kmaq Nation have treaty relationships with the Crown that include rights to fish, hunt, and gather in their traditional territories. The Wolastoq (Saint John River) has sustained Wolastoqey people since time immemorial.

#### WOLASTOQEY NATION ON WATER

'Our people have ... relied on rivers for physical, spiritual, and cultural sustenance and their livelihood since time immemorial.' — Chief Bill Ward, Metepenagiag First Nation (NB Water Strategy, 2018)

'Our waters continue to be an important resource for transportation, sustenance and ceremony. Put simply, the waters are the modern day equivalent of our super highways, grocery stores, workplaces and churches.' — Wolastoqey Nation in New Brunswick (NB Water Strategy, 2018)

The NB Water Strategy explicitly recognizes the unique significance of water to First Nations and commits to ongoing dialogue and collaboration. The Canada Water Agency's Wolastoq initiative specifically includes Indigenous knowledge integration and consultation with Wolastoqey Elders as components of funded projects.

## 6. Who does what in NB water governance?

Day-to-day water governance in New Brunswick involves multiple levels of government, community organizations, and regulatory agencies. Knowing who is responsible for what is an important practical skill.

Actor	Role in NB water governance
<b>Dept. of Environment &amp; Local Govt. (DELG)</b>	Administers Clean Water Act, WAWA permits, wetlands policy, surface water quality monitoring, cyanobacteria advisories, environmental assessments.
<b>Dept. of Energy &amp; Resource Development (DNRED)</b>	Manages Crown land, forests, fish and wildlife habitat, Species at Risk (provincial); issues forestry licences near watercourses.
<b>Dept. of Agriculture, Aquaculture &amp; Fisheries (DAAF)</b>	Beneficial management practices for agriculture; aquaculture regulation; integrated pest management.
<b>Dept. of Health</b>	Drinking water quality standards; recreational water advisories (beaches, lakes); cyanobacteria health advisories.
<b>Fisheries and Oceans Canada (DFO)</b>	Fisheries Act enforcement; fish habitat protection; Species at Risk (aquatic); salmon management.
<b>Environment &amp; Climate Change Canada (ECCC)</b>	Water quality monitoring; CABIN; Canadian Environmental Sustainability Indicators; CEPA administration.
<b>Canada Water Agency (CWA)</b>	National freshwater strategy; Freshwater Ecosystem Initiatives including Wolastoq/SJR; Canada Water Act review.
<b>Watershed groups / alliances</b>	Community-based monitoring, stewardship, restoration, education (e.g. PWA, Nashwaak Watershed Association, Hammond River Angling Association).
<b>First Nations</b>	Treaty rights; traditional ecological knowledge; increasingly involved in CABIN, watershed monitoring, and co-governance.
<b>CCME</b>	Develops national water quality guidelines used as benchmarks by all governments; not a regulatory body.

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## 7. How water law is enforced — practical scenarios

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Understanding legislation is one thing; knowing how it works in practice is another. These scenarios connect the legal framework to real situations students may encounter.

### Scenario A: A farmer ploughs within 10 m of a stream

- Provincial: violates WAWA (30 m no-disturbance zone). DELG officers can issue a stop-work order and require restoration. Fines apply.
- Federal: if fish habitat is harmed (e.g. sediment smothers spawning gravel), the Fisheries Act Section 35 HADD prohibition may apply. DFO can investigate and prosecute.
- Remedy: farmer must restore the buffer zone; may need to install an erosion control fence and replant native vegetation.

### Scenario B: A cyanobacteria bloom appears on a public lake

- NB Department of Health issues a public health advisory under provincial health legislation.
- DELG monitors the bloom and investigates causes (nutrient loading, temperature).
- If a point source is identified (e.g. a sewage discharge), DELG can issue a cease-and-desist order under the Clean Environment Act.
- If NPS is the cause (agricultural runoff), regulatory options are limited; watershed group outreach and BMP programs are the primary response.

### Scenario C: A logging company clears trees to a stream bank

- Provincial: violates WAWA if within 30 m without a permit. DELG can issue stop-work order.
- If riparian clearing raises stream temperature above salmonid thresholds: potential Fisheries Act HADD violation. DFO involvement possible.
- If Species at Risk habitat is present (e.g. Brook Floater mussels): SARA critical habitat protections may apply. DFO/ECCC review required.

#### THE 30-METRE RULE IN EVERY SCENARIO

In every scenario, NB's 30-metre WAWA buffer is the first line of defence. It is the most consistently applicable rule across agriculture, forestry, development, and infrastructure. Knowing what it covers — and what it doesn't — is essential Envirothon knowledge. It covers disturbance, machinery, vegetation removal, fill, excavation. It does not cover agricultural grazing, tilling, seeding, or harvesting vegetables directly from within the zone (explicit exemptions in the Act).

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## 8. New Brunswick spotlight — governance in action

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### 29 protected drinking water watersheds

Since 2001, all 29 watersheds supplying drinking water to NB local governments have been protected under the Clean Water Act through Watershed Protected Areas Designation Orders. These orders restrict activities within the designated watershed that could contaminate the drinking water source. This is one of the most comprehensive source water protection programs in Canada.

### Petitcodiac causeway — when law meets ecology

The Petitcodiac River causeway, constructed in 1967–68, dramatically altered the river and its ecosystem. The Fisheries Act's fish habitat provisions were not effectively applied at the time of construction. Decades of advocacy by local groups, First Nations, and environmental organizations — combined with updated understanding of the Fisheries Act's requirements — eventually led to partial opening of the gates in 2010. This case illustrates both the power and the limitations of environmental legislation when economic and political considerations are involved.

### Musquash Estuary — marine protected area

Designated in 2006 as Atlantic Canada's first marine protected area under the Oceans Act, the Musquash Estuary is protected by federal legislation administered by DFO. It prohibits activities that would disturb the seabed, harm species, or deposit harmful substances. The Musquash MPA shows how federal and provincial protections can be layered: the estuary is also subject to NB's WAWA regulation for any activities in the 30 m buffer zone.

#### ENVIROTHON TEST TIP

You may be asked to identify which level of government is responsible for a specific water management situation, or which legislation applies. Use this shortcut:

- if it involves fish habitat or species at risk — Fisheries Act or SARA (federal)
- If it involves work near a watercourse or wetland in NB — WAWA under the Clean Water Act (provincial)
- If it involves drinking water quality in NB — Clean Water Act + Health Act (provincial + DELG/Health)
- If it involves a national waterbody like the Wolastoq — Canada Water Agency / Freshwater Action Plan (federal)

## 9. Key terms

<p><b>Clean Water Act (NB, 1989)</b> NB's primary water law. Governs watercourse and wetland protection, drinking water, wellfields, and watershed protection orders.</p>	<p><b>WAWA</b> Watercourse and Wetland Alteration Regulation (NB Reg. 90-80). Requires permits for activities within 30 m of any watercourse or wetland.</p>
<p><b>30-metre buffer</b> Mandatory no-disturbance zone around all NB watercourses and wetlands under WAWA. Most important NPS and habitat protection rule in NB.</p>	<p><b>Provincially Significant Wetland (PSW)</b> Wetland of provincial/national importance in NB. All coastal wetlands qualify. Cannot be altered under any circumstances.</p>
<p><b>No net loss</b> NB wetland policy: any unavoidable wetland loss must be compensated with creation or restoration of equivalent wetland elsewhere.</p>	<p><b>NB Water Strategy 2018–2028</b> NB's 10-year water management framework with 5 goals covering knowledge, drinking water, ecosystem health, cooperation, and reporting.</p>
<p><b>Clean Environment Act (NB, 1973)</b> NB legislation prohibiting pollution of provincial waters; the Water Quality Regulation (1982) under this Act regulates discharges.</p>	<p><b>Fisheries Act</b> Canada's primary federal aquatic protection law (1868). Prohibits harmful alteration of fish habitat (s.35) and deposit of deleterious substances (s.36).</p>
<p><b>HADD</b> Harmful Alteration, Disruption, or Destruction of fish habitat. The offence prohibited by Fisheries Act Section 35.</p>	<p><b>Species at Risk Act (SARA, 2002)</b> Federal law protecting species listed as Extirpated, Endangered, or Threatened. Applies to aquatic species across all of Canada.</p>
<p><b>COSEWIC</b> Committee on the Status of Endangered Wildlife in Canada. Independently assesses conservation status of species; recommendations inform SARA listing.</p>	<p><b>Canadian Environmental Protection Act (CEPA, 1999)</b> Federal pollution prevention law. Controls toxic substances including those affecting water quality.</p>
<p><b>Canada Water Act (1970)</b> Federal framework for federal-provincial water cooperation. Currently under review for modernization.</p>	<p><b>Canada Water Agency</b> New standalone federal agency (October 2024). Mandated to improve freshwater management and lead national Freshwater Action Plan.</p>
<p><b>Section 35 (Constitution Act)</b> Constitutional recognition of existing Aboriginal and treaty rights, including water-related rights of Indigenous peoples.</p>	<p><b>UNDRIP Act (2021)</b> Canada's legislation implementing the UN Declaration on the Rights of Indigenous Peoples, including rights related to water.</p>
<p><b>CCME</b> Canadian Council of Ministers of the Environment. Develops national water quality guidelines; supports intergovernmental environmental cooperation.</p>	<p><b>DFO</b> Department of Fisheries and Oceans Canada. Administers the Fisheries Act and SARA for aquatic species.</p>


## 10. Quick check


Test yourself before moving on. Can you answer all of these?


### Quick Check — Review Questions

1. Under Canada's Constitution, which level of government owns water resources? Which level protects fish habitat? How do these sometimes create overlap?
2. What activities require a WAWA permit in New Brunswick? Name five specific examples.
3. What is the difference between a Provisional and a Standard WAWA permit? When would each be used?
4. A developer wants to build a warehouse 20 metres from a stream. What provincial and federal legislation applies? What permits are required?
5. Explain the Fisheries Act's two main aquatic protection provisions (ss. 35 and 36). How do they differ? Give an example of each being violated.
6. What is COSEWIC and how does it differ from Schedule 1 of SARA? Why does the difference matter?
7. How did the Canada Water Agency change Canadian freshwater governance in 2024? What specific connection does it have to New Brunswick?
8. Explain why the Dwarf Wedgemussel's disappearance from NB raises questions about the application of the Fisheries Act in 1967–68.
9. A cyanobacteria bloom appears on a lake. The cause is determined to be agricultural runoff (NPS). What can DELG legally do? What are the limits of regulatory action in this case?
10. BONUS: Compare the roles of DELG, DFO, and the Canada Water Agency in protecting a NB salmon river from a logging operation that plans to harvest trees within 15 metres of the stream.


## 11. Further resources

 **NB DELG — When is a WAWA Permit Required?** Official NB guidance on what activities require a permit and how to apply. Includes provisional vs. standard permit types.  
[gnb.ca/content/gnb/en/departments/elg/environment/content/land\\_waste/content/reference\\_manual/watercourse\\_and\\_wetland\\_alteration.html](https://gnb.ca/content/gnb/en/departments/elg/environment/content/land_waste/content/reference_manual/watercourse_and_wetland_alteration.html)

 **NB Clean Water Act (full text)** Complete text of the Act including all definitions. Watercourse and wetland definitions are particularly important to know. [laws.gnb.ca/en/showdoc/cs/c-6.1](https://laws.gnb.ca/en/showdoc/cs/c-6.1)

 **Canada Water Agency — Mandate** Overview of the new federal agency's mandate, programs, and the Freshwater Action Plan. Launched October 2024. [canada.ca/en/canada-water-agency/corporate/mandate.html](https://canada.ca/en/canada-water-agency/corporate/mandate.html)

 **Fisheries Act — Projects Near Water** DFO's guide for anyone whose project might affect fish habitat. Explains when Fisheries Act authorization is required. [dfo-mpo.gc.ca/pnw-ppe/index-eng.html](https://dfo-mpo.gc.ca/pnw-ppe/index-eng.html)

 **Species at Risk Public Registry** Searchable database of all COSEWIC assessments and SARA-listed species. Find NB freshwater species at risk here. [sararegistry.gc.ca](https://sararegistry.gc.ca)

 **Conservation Council of NB — Water Policy** Civil society perspective on gaps and strengths in NB water legislation. [conservationcouncil.ca/water-policy/](https://conservationcouncil.ca/water-policy/)

 **NB Water Strategy 2018–2028 (full document)** Complete strategy with all 5 goals, actions, and agency responsibilities. Available on the NB DELG website. [gnb.ca](https://gnb.ca) (search: Water Strategy)

← **Previous:** Module 6: Non-Point Source Pollution

→ **Next:** Module 8: Field Skills & Exam Preparation