

Extinguishment of priority oyster aquaculture area

Policy number:	RDOC24/184318	Version:	5.0
Authorised by:	Director, Fisheries & Aquaculture Management	Authorised date:	30 October 2024
Issued by:	DPIRD Fisheries	Effective date:	30 October 2024
Category:	Operation and Industry	Review date:	30 October 2026

Policy statement:

This policy sets out the circumstances and process under which a priority oyster aquaculture area (POAA) will be extinguished under section 176 of the *Fisheries Management Act 1994*, either in part or in full, to allow for non-oyster aquaculture-related public purposes, to protect live oyster reef or to protect threatened seagrass species.

Scope:

This policy applies to all POAA as described in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS).

Requirements:

- At any review of OISAS any vacant POAA may be considered for extinguishment if the area no longer meets the assessment criteria for POAA (Table 5 of OISAS) or remains unleased for more than 10 years.
- POAA will only be extinguished for the purpose of non-oyster aquaculture related activity if:
 - no viable option other than the proposed non-oyster aquaculture related activity can be identified.
 - any adverse effect on the oyster aquaculture industry is mitigated.
 - any compensation required by the Act or Regulation is paid.
- The Policy Officer Aquaculture will be the primary contact for enquires from proponents and public agencies seeking to undertake non-oyster aquaculture related development on POAA.
- If clause 2 of this policy is satisfied and POAA is to be extinguished for a public purpose and the area is a current aquaculture lease then NSW Department of Primary Industries and Regional Development (DPIRD) will withdraw the lease under section 176 of the Act.

Note: Section 176 requires that the lessee be paid compensation under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.
- If clause 2 of this policy is satisfied and POAA is to be extinguished for a public purpose and the area is not a current aquaculture lease then DPIRD will support the extinguishment.
- Finalisation of withdrawal and/or exclusion of land from further leasing is subject to the removal of all cultivation materials from the area.

7. When considering the adequacy of mitigation measures identified by a proponent/agency, DPIRD will consider:
 - a. the viability and productivity of the subject lease(s).
 - b. the strategic importance of the lease(s) to local industry (for example, is the lease the only catching lease in the estuary? Is the lease within a NSW Shellfish Program harvest area?).
 - c. any other matter raised in consultation with the local oyster industry.
8. The mitigation of any adverse effects on POAA of non-oyster aquaculture development may consist of:
 - a. Replacement with a new reasonable equivalent lease area that will be classified as POAA at the next staged review.

Note: Reasonable equivalent area will be assessed on the basis of area, productive capacity and culture potential (i.e. spat catching, raft, water depth etc) by DPIRD in consultation with the local industry and the local NSW Shellfish Program. The area must be approved by the Director Fisheries and Aquaculture Management.
 - b. Works that mitigate the impact of the development to the local oyster industry to a value agreed to by DPIRD in consultation with the local oyster industry. Works may take the form of:
 - i. Clean up work, for example, the removal of derelict cultivation material from public water land.
 - ii. Contribution to the Local Shellfish Program.
 - iii. Other work as agreed to by DPIRD in consultation with the local oyster industry.
9. Initial consultation and discussion between the proponent or agency, local industry and DPIRD regarding mitigation measures will be coordinated by the Policy Officer Aquaculture.
10. Replacement POAA or other works will apply only to the estuary in which the affected lease is located.
11. Final mitigation measures must be approved by the Director Fisheries and Aquaculture Management.
12. To protect live oyster reef, vacant POAA may be extinguished where there exists live oyster reef from natural shell beds, historic shell bed or rock cultivation or derelict cultivation that has formed live oyster reef. The protection of live oyster reef on current POAA is covered under chapter 8.1.7 of OISAS.
13. To protect threatened seagrass species, vacant POAA may be extinguished where mapped seagrass areas exist. The protection of seagrasses on current POAA is covered under chapter 6.6 of OISAS.
14. To align with POAA criteria in chapter 5 of OISAS, vacant POAA may be extinguished where POAA overlaps or is inconsistent with criteria in chapter 5 of OISAS.
15. If clauses 12, 13 or 14 of this policy are satisfied and POAA is to be extinguished for a public purpose, then DPIRD will support the extinguishment, and the area will be reclassified as non-POAA.
16. DPIRD will not support the extinguishment of POAA under the following circumstances:
 - a. a viable alternative option is available for the proposed non-oyster aquaculture related development.
 - b. the extinguishment of POAA is not essential for the proposed development to proceed. For example, the proponent wishes to extinguish POAA due to aesthetic reasons associated with a proposed foreshore residential or tourist development.

- c. any adverse effect on the oyster aquaculture industry is not mitigated.
- d. any compensation required by the Act or Regulation is not paid.

Roles and responsibilities:

- Senior Policy Officer Aquaculture: undertake procedures set out in this policy
- Senior Fisheries Manager Aquaculture: undertake procedures set out in this policy

Legislation

- *Fisheries Management Act 1994*
- Fisheries Management (Aquaculture) Regulation 2024
- *Land Acquisition (Just Terms Compensation) Act 1991*
- State Environmental Planning Policy (Primary Production) (2021)
- *Environmental Planning and Assessment Act 1979*

Delegations:

- Fisheries Management Instrument of Delegation (Minister) 2024
- Fisheries Management Instrument of Delegation (Secretary) (No 2) 2024

Definitions:

- **Public purpose:** defined in section 7.8(9) of the *Crown Lands Management Act 2016*: public purpose includes any of the following; (a) the purpose of a road, (b) the purpose of a travelling stock route, (c) the purpose of a camping reserve or other reserve, (d) a purpose of a kind prescribed by the regulations for the purposes of this definition or specified by a notice published by the Minister in the Gazette.

Related policies:

- Policy No. O-041 Undertaking works on oyster aquaculture lease areas and permit areas and recovering costs
- NSW Oyster Aquaculture Sustainable Aquaculture Strategy (OISAS)

Revision history:

This policy replaces O-072 Extinguishment of priority oyster aquaculture area policy v 4.0 (RDOC22/3423).

Version	Revised date	Details
5.0	30 October 2024	<ul style="list-style-type: none">• Remove clause that allows POAA to be extinguished for a private purpose.• Remove clause that allows POAA to be extinguished for a way of access. Address in separate policy.• Add statement re: protection of seagrass and oyster reef. Consistency with POAA criteria table 5 of OISAS.• Update reference to Crown Lands Act.