

## Extinguishment of Priority Oyster Aquaculture Area

NUMBER O-072

VERSION 4.0

AUTHORISED BY Director Fisheries and Aquaculture Management

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ISSUED BY DPI Fisheries

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CATEGORY Operations and Industry

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### Purpose

This policy sets out the circumstances and process under which a Priority Oyster Aquaculture Area (POAA) will be extinguished to allow for non-oyster aquaculture-related development and to protect live oyster reef.

### Scope

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

### Policy

1. 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 OISAS) or remains unleased for more than 10 years.
2. POAA will only be extinguished for the purpose of non-oyster aquaculture related activity if:
  - a. no other viable option than the proposed non-oyster aquaculture related activity can be identified
  - b. any adverse effect on the oyster aquaculture industry is mitigated
  - c. any compensation required by the Act or Regulation is paid.
3. Policy Officer Aquaculture (Oysters) will be the primary contact for enquires from proponents and public agencies seeking to undertake non-oyster aquaculture related development on POAA.
4. If Clause 2 is satisfied and POAA is to be extinguished for a public purpose and the area is a current aquaculture lease then NSW DPI 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.
5. If Clause 2 is satisfied and POAA is to be extinguished for a public purpose and the area is not a current aquaculture lease then NSW DPI will support the extinguishment
6. If Clause 2 is satisfied and POAA is to be extinguished for a private purpose and the area is a current aquaculture lease then the proponent must privately negotiate compensation terms with the lessee for the withdrawal of the lease including any work required to remove the lease infrastructure. If these arrangements are made NSW DPI will either accept a surrender by the lessee under Section 174 or determine an access way under Section 175; whichever Section is more applicable. The area will be excluded from further leasing under Section 178 if required. The area will be reclassified as non-POAA.
7. If Clause 2 is satisfied and POAA is to be extinguished for a private purpose and the area is not a current aquaculture lease then NSW DPI will support the non-oyster aquaculture activity and exclude the area from further leasing under Section 178 if required. The area will be reclassified as non-POAA.

8. Finalisation of withdrawal and/or exclusion of land from further leasing is subject to the removal of all cultivation materials from the area.
9. When considering the adequacy of mitigation measures identified by a proponent/agency, NSW DPI 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.
10. 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 NSW DPI in consultation with the local industry and the local NSW Shellfish Program. The area must be approved by NSW DPI 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 NSW DPI in consultation with the local oyster industry. Works may take the form of:
    - i. Clean up work, e.g. the removal of derelict cultivation material from public water land
    - ii. Contribution to the Local Shellfish Program
    - iii. Other work as agreed to by NSW DPI in consultation with the local oyster industry.
11. Initial consultation and discussion between the proponent/agency, local industry and NSW DPI regarding mitigation measures will be coordinated by Policy Officer Aquaculture.
12. Replacement POAA or other works will apply only to the estuary in which the affected lease(s) is located.
13. Final mitigation measures must be approved by the Director Fisheries and Aquaculture Management.
14. 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 the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS).
15. If Clause 14 is satisfied and POAA is to be extinguished for a public purpose, then NSW DPI will support the extinguishment and the area will be reclassified as non-POAA.
16. NSW DPI 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 the 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/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**

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

### **Delegations**

- Refer to relevant Delegation

### **Manual Legislation**

- *Fisheries Management Act 1994*, Sections 174, 175, 176, 177, 178, 222, 223(1)(2)(3), 224

- *Crown Lands Act 1989*, Section 136(1) – “The Minister may, by notification in the Gazette, withdraw from any lease or licence under this Act or the Crown Lands (Continued Tenures) Act 1989 any land required for a public purpose”.
- *Land Acquisition (Just Terms Compensation) Act 1991*
- Fisheries Management (Aquaculture) Regulation 2017
- State Environmental Planning Policy (Primary Production and Rural Development) (2019)
- *Environmental Planning and Assessment Act 1979*

#### Related policies

- Policy No. O-041 Undertaking works on oyster aquaculture lease areas and permit areas and recovering costs

#### Other related documents

NSW Oyster Industry Sustainable Aquaculture Strategy

#### Definitions

- The Act: *Fisheries Management Act 1994*.
- The Regulation: Fisheries Management (Aquaculture) Regulation 2017.
- Public purpose: defined in Section 176(2) of the Act: “any public purpose for which land may, under section 136 of the *Crown Lands Act 1989*, be withdrawn from a lease under that Act”. Under the *Crown Lands Act 1989*, public purpose is defined as “in relation to a provision of this Act, means any purpose for the time being declared by the Minister, by notification in the Gazette, to be a public purpose for the purposes of that provision”.
- Private purpose: any purpose associated with a private or non-government individual/company/organisation.

#### Revision history

Version	Date issued	Notes	By
1	20/07/2009		Senior Policy Officer Aquaculture
2	07/11/2011	Updated to current policy format	Senior Policy Officer Aquaculture
3	05/09/2012	Replacement of references to 2007 Regulation with references to 2012 Regulation.	Senior Policy Officer Aquaculture
4.0	19/1/2022	Updating DPI roles, contact details, publications and replacement of references to 2012 Regulation with references to 2017 Regulation.	Senior Policy Officer Aquaculture

#### Contact

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