



BIOSECURITY ACT 2015

Discussion Paper: Pacific Oysters

December 2015



Photo: © NSW Department of Primary Industries

Comments on this paper close on 12 February 2016

Email your comments to: submissions.biosecuritylegislation@dpi.nsw.gov.au

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For more information

See: www.dpi.nsw.gov.au/biosecurityact

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Summary

The *Biosecurity Act 2015* will repeal the noxious fish provisions in the *Fisheries Management Act 1994* (FM Act). These provisions currently include regulatory controls with respect to Pacific Oysters.

Having considered the existing arrangements, as well as the biosecurity risks associated with Pacific Oysters, it is proposed that the management of Pacific Oysters under the *Biosecurity Act 2015* will be via the General Biosecurity Duty (GBD).

Aquaculture permits issued under the FM Act will continue to be required to cultivate Pacific Oysters. These permits will include conditions restricting movements between estuaries on account of wild Pacific Oysters as well as various other conditions with respect to the type of aquaculture allowed, species permitted for cultivation, environmental controls, farm management and other matters.

Background Information

What is the problem?

Pacific Oysters were introduced into NSW waters prior to the 1980s. The oysters are a hardy species with fast growth and high reproductive rates, and under favourable conditions can displace native intertidal species.

A significant pathway for the spread of Pacific Oysters is through the movement of cultivated oysters and oyster cultivation material between estuaries for aquaculture purposes. A functionally sterile (triploid) Pacific Oyster is permitted for cultivation on commercial aquaculture leases in the Georges River/Botany Bay, Hawkesbury, Clyde, Shoalhaven and Crookhaven, Tweed rivers, and Wallis and Wapengo lakes. The cultivation of both diploid and triploid Pacific Oysters is permitted at Port Stephens.

Why is it important?

The NSW oyster industry is the state's most valuable aquaculture industry and an important contributor to the NSW economy, with \$31.8 million of Sydney Rock oysters and \$2.1 million of Pacific Oysters sold on the NSW and interstate market in 2013-14.

Oysters are farmed in 33 NSW estuaries between Eden in the south and the Tweed River in the north. There are about 2256 aquaculture leases, with a total area of approximately 2816 hectares.

What is the outcome we are seeking?

The desired outcome is to contain and manage wild Pacific Oysters at their current distribution in order to protect the natural environment and the oyster aquaculture industry.

Current management arrangements

Pacific Oysters are currently managed under the FM Act, *Fisheries Management (General) Regulation 2010* and the *Fisheries Management (Aquaculture) Regulation 2012*. This legislation:

- lists Pacific Oysters as a Class 2 noxious fish in all estuarine and ocean waters except Port Stephens;
- prohibits the release of Pacific Oysters into any waters other than the waters of Port Stephens unless under the authority of a permit;

- prohibits the possession of live Pacific Oysters unless under the authority of a permit or if kept in a fully-contained aquarium;
- prohibits the cultivation of Pacific Oysters without an aquaculture permit;
- prohibits the sale of Pacific Oysters unless under authority of a permit; and
- requires anyone who becomes aware of the presence of Pacific Oysters to notify a Fisheries Officer (unless the department is already aware of it).

People who wish to conduct aquaculture in NSW must apply to DPI for an aquaculture permit under Part 6 of the FM Act. Aquaculture permits typically contain a number of conditions relating to the type of aquaculture allowed, species permitted for cultivation, environmental controls, farm management and other matters.

Aquaculture permits for Pacific Oysters are also subject to numerous conditions restricting the movement of oysters and oyster cultivation material between certain estuaries. These movement conditions can be found in Division 2A of Part 2 of the *Fisheries Management (Aquaculture) Regulation 2012*. These conditions are primarily aimed at minimising the spread of wild Pacific Oysters via movement of Sydney Rock Oysters and cultivation equipment between estuaries and will continue to apply in addition to any restrictions imposed under the *Biosecurity Act 2015*.

The NSW Shellfish Committee has provided in-principal support for a proposed new policy for the management of overcatch (including wild Pacific Oysters) on aquaculture leases, known as 'neat and tidy' provisions. The proposed new policy stems from the Division 2A or Part 2 of the *Fisheries Management (Aquaculture) Regulation 2012* and the fact that the new risk-based controls do not include any on-lease management of Pacific Oysters. This policy:

- does not require local population control measures for wild populations of Pacific Oysters;
- provides for DPI to support local oyster industry initiatives through the preparation of Pacific Oyster Management Plans; and
- confirms that deliberate cultivation of wild or hatchery produced diploid Pacific Oysters without the authority of an aquaculture permit will remain illegal.

NSW DPI Fisheries Officers inspect current oyster aquaculture leases and will investigate and prosecute any deliberate cultivation of wild or hatchery produced diploid Pacific Oysters or triploid Pacific Oysters without the authority of an aquaculture permit as an offence under the FM Act.

Management under the Biosecurity Act 2015

It is proposed that the biosecurity risks associated with Pacific Oysters be managed under the General Biosecurity Duty (GBD). The Act introduces the concept of shared responsibility via the inclusion of a GBD. The GBD requires any person dealing with biosecurity matter (e.g. Pacific Oysters) or a carrier of biosecurity matter (e.g. cultivation equipment or a boat) and who knows or ought to know of the biosecurity risks associated with that activity to take measures to prevent, minimise or eliminate the risk as far as is reasonably practicable. This requirement is in addition to any other regulatory requirements that apply such as aquaculture permit conditions.

Aquaculture permit holders should know, or ought to know, of the biosecurity risks associated with Pacific Oysters so they would be required to take measures to prevent, minimise or eliminate the risk as far as is reasonably practicable. For example, the GBD would require an oyster farmer who detects Pacific Oysters on his or her cultivation equipment to not move the equipment to another estuary that does not contain Pacific Oysters.

Another example of the GBD is if an oyster farmer uses a boat in an estuary where Pacific Oysters are known to exist, and he or she wants to move that boat to another estuary where Pacific Oysters are not known to exist. The oyster farmer is then subject to a GBD to prevent or minimise the spread of Pacific Oysters. The farmer can discharge his or her GBD simply by

cleaning the boat to make sure it is free from Pacific Oysters before moving it from the original estuary.

Authorised officers have powers under the *Biosecurity Act 2015* to respond to circumstances where Pacific Oysters are not being dealt with in accordance with the requirements of the Act. For example, they may seize and destroy the pest species, or issue a biosecurity direction requiring a permit holder to take certain action.

Aquaculture permits issued under the FM Act will include conditions regulating the movement of oysters and oyster cultivation material between estuaries. Aquatic Biosecurity staff will continue their current role in assessing and providing recommendations on new applications for aquaculture permits made to Fisheries NSW regarding biosecurity risks posed by the proposed activities.

Other points to note include:

- The prohibition on release of live fish in section 216 of the FM Act will be retained.
- Overcaught Pacific Oysters on oyster lease infrastructure will be required to be removed according to requirements under existing 'neat and tidy' provisions that apply to aquaculture permit holders under the FM Act.
- Existing aquaculture management provisions under the *Fisheries Management (Aquaculture) Regulation 2012* will be retained.

What do you think?

We value your comments on how we can improve our biosecurity system and look forward to receiving your input into this important process.

Please complete the following survey on 'Pacific Oysters' at:
<https://www.surveymonkey.com/r/pacificoysters>.

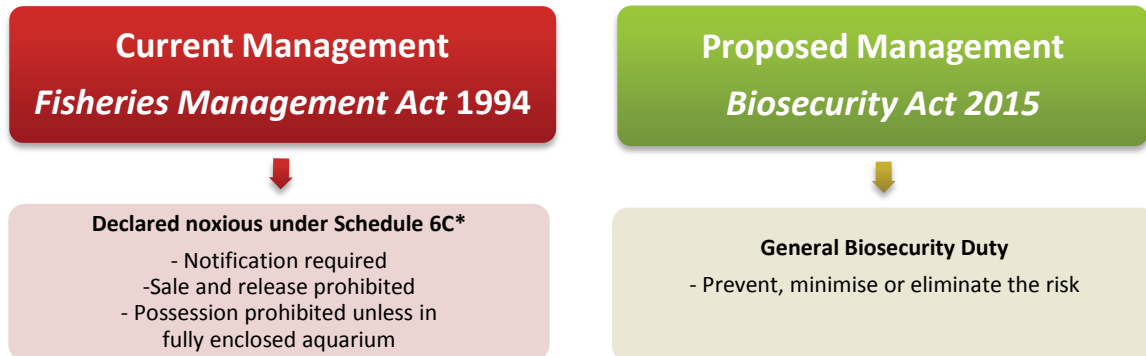
Alternatively, submit your feedback **by Friday, 12 February 2016** via [email](#) or post to:

Biosecurity Act 2015
NSW Department of Primary Industries
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Orange NSW 2800

For more information about the *Biosecurity Act 2015* and regulatory framework, please visit www.dpi.nsw.gov.au/biosecurityact.

Appendix

Summary of current and proposed management of Pacific Oysters



**Exemption for Pacific Oysters in Port Stephens and triploid Pacific Oysters*

Note: Existing aquaculture management provisions under the *Fisheries Management (Aquaculture) Regulation 2012* will be retained (e.g. oyster shipment logbook system and other permit conditions relating to inter-estuarine movement, sale and cultivation etc.).