

Assessment of aquaculture permit applications, commercial farm development plans and review of environmental factors (REF) policy

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Policy statement:

This policy details the assessment process for permit applications submitted under part 6 of the *Fisheries Management Act 1994* (the Act), which may be:

- An application for a new aquaculture permit in line with section 145 of the Act, or
- An application to vary an existing aquaculture permit in line with section 148 of the Act.

For these applications, the policy defines when NSW Department of Primary Industries and Regional Development (DPIRD) may require the applicant to complete a commercial farm development plan (CFDP), and what content will be required in that plan.

A CFDP is required for all permit applications lodged under section 145 of the Act and may be required for permit applications lodged under section 148 of the Act. In line with section 152 of the Act and section 21 of the Fisheries Management (Aquaculture) Regulation 2024 (the Regulation), the department may also require a permit holder to complete a CFDP at any time while their permit is current.

The policy also defines the environmental assessment that must be undertaken on any permit application. All permit applications submitted under sections 145 and 148 of the Act trigger a review of environmental factors (REF) assessment.

DPIRD Fisheries assesses and approves applications for new aquaculture permits for oyster aquaculture under Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) if they are within a priority oyster aquaculture area (POAA) as defined in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). A REF for the purpose of part 5.5 of the EP&A Act is required for new permits issued under section 145 of the Act and permit variations completed under section 148 of the Act.

In accordance with the Department of Planning Housing and Infrastructure Guidelines for Division 5.1 assessments (2022), assessment of environmental impacts in the form of a REF can vary depending on the scale, complexity and potential impacts of the activity being assessed, and may take the form of a simple checklist, but must include environmental factors listed in section 3 of the guidelines.

Scope:

This policy applies to any person who applies for a new aquaculture permit in line with section 145 of the Act, or any existing permit holder who requests a variation of the area or activity on their current permit in line with section 148 of the Act. These permit applications may be associated with:

- An application for a new aquaculture lease, which is being allocated in line with the Aquaculture Lease Allocation Policy
- An application to transfer or sublet an existing aquaculture lease to the applicant of the permit application.

This policy also applies to any DPIRD officer who is required to undertake an environmental assessment on permit applications lodged under sections 145 and 148 of the Act.

Requirements:***Permit applications lodged under section 145 of the Act***

1. An application for a new aquaculture permit under section 145 of the Act must be accompanied by a commercial farm development plan (CFDP) describing the manner in which the applicant proposes to undertake aquaculture.
2. The proposed activities in a CFDP must be consistent with the relevant development plan for the sector to which the permit application relates – either the NSW Oyster Industry Sustainable Aquaculture Strategy, the NSW Marine Waters Sustainable Aquaculture Strategy or the NSW Land Based Sustainable Aquaculture Strategy.
3. If a permit application lodged under section 145 of the Act is not accompanied by a CFDP, the application will be deemed unduly made and will not be considered by the department.
4. A permit application lodged under section 145 of the Act, which involves multiple classes of permit, may be accompanied by one CFDP however that plan must include details of the proposed activities for all classes of permit that are being applied for.
5. A CFDP must include a lease maintenance and development plan for class A and B aquaculture permit applications, and a biosecurity risk management plan for applications of all classes of permit.
6. A CFDP must be in a form approved by the Minister. It must include sufficient detail that enables the department to assess the proposed activities that will occur under the authority of the permit if granted.
7. If the department determines that specific information is missing or lacking in a CFDP, it will request in writing for the applicant to provide this information within a specified timeframe.
8. If the applicant does not provide any requested information that is needed to assess the permit application and CFDP, the permit application may be refused in line with section 146(2)(d) of the Act. Before this occurs, the applicant will be given the opportunity to make written submissions on the matter via a show cause notice under section 146(3) of the Act.
9. A permit application and supporting CFDP submitted in line with section 145 of the Act only requires payment of the prescribed fee for a new permit application (schedule 3, item 1).
10. For lease-based permit applications, the department will undertake a review of environmental factors (REF) assessment on each aquaculture lease that the applicant is proposing to use under the authority of their new permit.
11. If, following an environmental assessment, the department determines that *Posidonia* seagrass or oyster reef exists on a lease area, the department may take steps to protect these by way of requiring a new survey of the lease area (for new leases), or adding specific conditions to the aquaculture permit to ensure the protection of seagrasses and oyster reef (for existing leases).

Permit variation requests lodged under section 148 of the Act

12. A permit holder may be required to submit a new or updated CFDP to support a request for permit variation under section 148 of the Act, where the following circumstances exist:
 - a. The permit holder is proposing to increase the area in which they are authorised to undertake aquaculture (for example, lease area that is being acquired via a lease tender process), particularly if the increased area is deemed significant.
 - b. The permit holder is proposing to change the type of aquaculture permitted under the permit (for example, a new species is being added to their permit), particularly if the new species is not listed in the relevant development plan.
 - c. The permit holder is proposing to undertake aquaculture in an estuary or area that has not been previously authorised by the permit.
 - d. The permit holder is proposing an activity that may have a potential impact on *Posidonia* seagrass or oyster reef.
13. The decision to require a new or updated CFDP to support a permit variation request will be made at the department's discretion, following:
 - a. an initial assessment of the details surrounding the permit variation, and
 - b. consideration of the permit holder's existing CFDP and whether that plan sufficiently covers the activities being proposed by the variation request.
14. If a permit holder has submitted a permit variation request as part of a lease tender submission, they will only be asked to submit a new or updated CFDP if they are identified as a potentially successful tenderer and one of the circumstances listed in clause 12 of this policy exist.
15. If a permit holder applies to acquire a current aquaculture lease (already in production) by way of a lease transfer, transmission or sublet, the department will consider whether the lease acquisition is a significant change to the permit and/or if the permit holder is going to change the current activities being undertaken on the lease. In such cases, the lease application will be treated as a permit variation request under section 148 of the Act and a CFDP may be required as per clause 12 of this policy.
16. If a permit holder is required to submit a new or updated CFDP to support a permit variation, the department will ask for this information in writing and the permit holder will be given a specified period to fulfil the requirement.
17. If a permit holder is required to submit a new or updated CFDP to support a permit variation, payment of the prescribed fee (schedule 3, item 7) will be required, unless the fee is waived in line with section 288B of the Act.
18. A CFDP must be in a form approved by the Minister. It must include a lease maintenance and development plan for class A and B permits, and a biosecurity risk management plan for all classes of permit. It must provide sufficient detail to enable the department to assess the activities being proposed in the permit variation request.
19. If a permit holder does not submit a new or updated CFDP when requested to do so, the permit variation request may be refused in line with section 148(2) of the Act.
20. For lease-based permit variation requests, the department will undertake a REF assessment on each aquaculture lease that is associated with the proposed permit variation.
21. If, following an environmental assessment, the department determines that *Posidonia* seagrass or oyster reef exists on a lease area, the department may take steps to protect these by way of requiring a new survey of the lease area (for new leases), or adding specific conditions to the aquaculture permit to ensure the protection of seagrasses and oyster reef (for existing leases).

Exemptions to this policy

22. In line with section 21(3) of the Regulation, the permit holder must prepare a new or updated CFDP if required by the Minister, irrespective of whether they have submitted a permit application or request under sections 145 or 148 of the Act.
23. If a permit holder submits a permit variation request to add a new species or area to their class D, F or H permit, they will not be required to submit a revised CFDP if the existing activities are enclosed and the permit holder's current CFDP and biosecurity risk management plan are considered adequate for the proposed change.

Roles and responsibilities:

- Policy Officer Aquaculture: consider existing CFDP and undertake assessment of new CFDP. Complete REF assessments.
- Senior Policy Officer Aquaculture: approve POA assessment and make recommendation to SFM. Approve the granting of new permits and the variation of existing permits.
- Senior Fisheries Manager Aquaculture: Approve or refuse applications for new permits or requests for permit variations.

Legislation

- *Fisheries Management Act 1994*
- Fisheries Management (Aquaculture) Regulation 2024
- *Environmental Planning and Assessment Act 1979*

Delegations:

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

Related policies

- NSW Oyster Industry Sustainable Aquaculture Strategy
- NSW Marine Waters Sustainable Aquaculture Strategy
- NSW Land Based Sustainable Aquaculture Strategy
- Aquaculture Administration Policy – Aquaculture Lease Allocation

Revision history

This is a new policy.

Version	Date issued	Notes
1.0	30 October 2024	New policy developed.