

Aquaculture permit and lease holder responsibilities

May 2015

Aquaculture Permit Conditions

Aquaculture permit conditions are placed on your permit in accordance with the *Fisheries Management Act 1994* (the Act) and the *Fisheries Management (Aquaculture) Regulation 2012* (the Regulation) to protect the environment and to manage the aquaculture industry.

The permit conditions are arranged under three headings, but all conditions apply equally:

- Standard Conditions; apply to all aquaculture permit holders.
- Specific Conditions; apply to a group of aquaculture permit holders related by the species being cultured, culture type, infrastructure type or class of aquaculture permit.
- Special conditions; apply to a single permit holder and relate to matters that are unique to the particular farm or lease area authorised by that permit.

Check your permit to see what conditions apply. The holder of an aquaculture permit is guilty of an offence if, without lawful excuse, a condition of the permit is contravened (s152(3) of the Act).

Responsibilities described in the Act and Regulations

It is an aquaculture permit holder's responsibility to be aware of their obligations under the Act and Regulations. The aquaculture specific provisions are described mainly in s.142-191 of the Act and in the Regulation, although other sections of the Act and other the *Fisheries Management General Regulation* also have relevant provisions that must be observed.

This section describes the aquaculture specific responsibilities of aquaculture permit holders that are not permit conditions. These are taken from the Act and Regulations but this is not an exhaustive list and permit holders are advised to become

familiar with the relevant legislation and to seek their own legal advice if necessary.

In this information s. refers to a Section of the Act and c. refers to a Clause of the Regulation.

Aquaculture Permits

Aquaculture is prohibited except in accordance with a permit (s.144).

The permit gives the holder the authority to take fish of the species authorised by the permit (s.149).

Aquaculture permits remain in force until they are cancelled, but are not transferable (s.151).

Permit holders are required to provide information if required by the Minister (s.153). For example the annual production return must be submitted. The permit holder must notify the department of a change of address or change of directors of a body corporate within 28 days (s.155).

The permit holder must pay an annual contribution for the cost of administration and research (s.156). If these amounts are overdue, interest may be charged and debt recovery action will commence (s.158).

A permit may be cancelled immediately at the request of the permit holder or if the permit holder dies (s.159). The permit may also be cancelled following a hearing for various breaches of the Act and mismanagement. See Section 160 for the full detail of reasons why the Minister can cancel a permit. In summary they are:

- The application was false or misleading
- Contravention of the Aquaculture provisions in the Act or the Regulation.
- Contravention of Noxious fish provisions in the Act.
- Conviction for stealing fish or marine vegetation.
- Not undertaking aquaculture in accordance with a commercial farm development plan.
- The area authorised has varied

- An authorised lease area is not being used for the purpose for which the lease was granted.
- An authorised lease area is being mismanaged.
- The Minister is otherwise authorised to cancel the permit.

A permit holder has the right to make written submission as to why a permit should not be cancelled (s160 (2)) and may apply to the Civil and Administrative Tribunal for a review of any decision to cancel a permit (s160 (2)).

An aquaculture permit holder may be declared disqualified from holding an aquaculture permit (s.161). A permit holder has the right to make written submission as to why they should not be a disqualified person (s161 (6)) and may apply to the Civil and Administrative Tribunal for a review of any decision (s161 (7)).

Aquaculture leases

Rights of aquaculture lessees

Aquaculture leases are granted for no longer than 15 years (s163(5)) with first right of renewal for a further 15 years (s.167) and subsequent preferential renewal (s.168) if the area remains available for aquaculture and the terms and conditions of the lease have not been breached (s.168(3)). Preferential renewal expires 30 days after the expiry of the lease s.168(2).

The lessee has ownership of all fish and marine vegetation on the lease of the species authorised for cultivation by the lease and permit (s.164(1)). The lessee has the right to undertake authorised aquaculture but does not have exclusive possession of the leased area (s.164(2)). The lease area is subject to the public right of fishing however it is an offence for a person to interfere or damage anything on a leased area (s.164(3-4) and s.179).

Payments and Lease Security

A lessee must pay rent (s.165) and interest may be charged on overdue amounts (s.166).

Class A and B permit holders whose permit authorises an aquaculture lease area must enter into a lease security arrangement of either \$1000/ha cash deposit or bank guarantee (c.15). Oyster aquaculture permit holders also have the option of joining the non-refundable annual contribution scheme (c.19).

Marking, neat and tidy and clean-up

Leases must be marked in accordance with c.48-52. Marking requirements for the NSW Oyster Industry are detailed in Chapter 7.1 of the NSW

Oyster Industry Sustainable Aquaculture Strategy 2014 (OISAS).

A lease area must be kept in a tidy condition as a condition of an aquaculture permit (s.162). Best practice standards for the NSW Oyster Industry are detailed in Chapter 7 of OISAS.

NSW DPI compliance officers inspect every aquaculture lease once every 3 years and issue notices for non-compliance. If a permit holder does not comply with the notice, further action may include penalty notices. If non-compliance continues after a final warning contractors may be engaged to complete the work. The relevant permit holder is then billed for this cost.(s.162).

When a lease is terminated, all improvements must be removed so that only open water remains (s.171). If the lessee fails to clean-up the lease NSW DPI will engage contractors to do the work then bill the former lessee (s.171).

Approvals and transactions

If a lessee or permit holder has outstanding payment obligations or clean-up responsibilities under s.160 or s.171, NSW DPI may refuse to process any lease or permit transactions until these responsibilities are met.

The Minister may require the lessee to have the lease surveyed (s.169).

Approval from NSW DPI is required for:

- Raft cultivation,
- Oyster dredging,
- Wave barrier fencing, and
- Spray irrigation.

The Minister can determine access ways (s.175) or withdraw land from a lease (s.176). The Act makes provision for compensation to the lessee in these cases.

Development consent and approval from NSW DPI is required to carry out dredging or reclamation work on a leased area (s. 201).

Approval is required to harm marine vegetation unless it is being cultivated under the authority of an aquaculture permit (s. 204A, 204B & 205).

A lease may be transferred (s.173, c.39) sublet (s.172, c.38), consolidated (c.42), transmitted (c.40), subdivided (c.43) or surrendered (s.174, c.41) with the Minister's consent.

A lease may be cancelled following a hearing for various breaches of the Act and mismanagement. See Section 177 for the full detail of reasons why the Minister can cancel a lease. In summary they are:

- The lease is not being used for the purpose for which it was granted or no aquaculture is being undertaken.
- The area is polluted such that the produce is unfit for human consumption.
- Overdue debt
- Breach of lease conditions.

A lessee has the right to make written submission as to why a lease should not be cancelled (s.177(3)) and may apply to the Civil and Administrative Tribunal for a review of any decision to cancel a lease (s.177 (4)).

Biosecurity

Pacific Oyster Control

Clauses 7A to 7E of the Regulation controls the movement of oysters and material between estuaries for the purpose of minimising the spread of Pacific Oyster. These restrictions apply to all oyster aquaculture permit holders (including Akoya Pearl Oyster). Full details of the movement restrictions are given at

<http://www.dpi.nsw.gov.au/fisheries/pests-diseases/marine-pests/nsw/pacific-oyster>

Diseased fish

Permit holders must notify the department if they suspect the presence of a declared disease (s.183). Schedule 6B of the Act, contains a list of declared diseases.

The Minister may declare a quarantine area because of the presence or suspected presence of a declared disease (s.183). It is your responsibility to be aware of any relevant quarantine orders.

Permit holders must not intentionally or recklessly communicate a declared disease to live fish or marine vegetation (s.184). If you know, suspect that a fish is infected with a declared disease you must not sell any fish or marine vegetation (whether live or dead) and must not deposit it in any waters (s.185 - 186)..

Noxious Fish

Schedule 6C of the Act contains a list of noxious fish and marine vegetation. Permit holders must notify the department if they suspect a noxious fish or marine vegetation incursion.

The Minister may declare a quarantine area because of the presence or suspected presence of noxious fish and marine vegetation (s.209C). It is your responsibility to be aware of any relevant quarantine orders.

Permit holders must not release, sell or be in possession of noxious fish or marine vegetation unless authorised by their aquaculture permit (s. 209D, 210 & 211).

Fisheries officers have the power to seize and destroy noxious fish and marine vegetation or order a permit holder to do so (s.213).

Release and Importation

Permit holders are not authorised to release into any waters any live fish except under the authority of a permit issued by the Minister (s.216). This means that you are only authorised to stock the species listed on your permit onto your aquaculture farm or lease area.

Also permit holders are not authorised to import certain fish and marine vegetation listed in Schedule 5 of the *Fisheries Management (General) Regulation 2010* unless under the authority of a permit issued by the Minister (s.217, 217A).

Compliance

Permit holders should note that in accordance with s.253 of the Act a Fisheries Officer may, at any time of the day, enter any area the subject of an aquaculture permit and examine the area and the aquaculture undertaken in the area. Under s.247 of the Act a person who, without reasonable excuse, resists or obstructs a Fisheries Officer in the exercise of the officer's functions under this Act is guilty of an offence.

More information

See www.dpi.nsw.gov.au.

Also for legislation see www.legislation.nsw.gov.au

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