

State Environmental Planning Policy No 62—Sustainable Aquaculture (2000 EPI 473)

[2000-473]



New South Wales

Status Information

Currency of version

Historical version for 8 December 2006 to 17 December 2009 (accessed 23 November 2024 at 11:42)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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File last modified 8 December 2006

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New South Wales

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State Environmental Planning Policy No 62—Sustainable Aquaculture (2000 EPI 473)



New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy No 62—Sustainable Aquaculture*.

2 Commencement of Policy

This Policy commences on 1 October 2000.

3 Aim etc of Policy

The aims and objectives of this Policy are:

- (a) to encourage sustainable aquaculture in the State, namely, aquaculture development which uses, conserves and enhances the community's resources so that the total quality of life now and in the future can be preserved and enhanced, and
- (b) to make aquaculture a permissible use in certain areas for which a comprehensive and integrated regional aquaculture strategy has been developed (being a strategy that incorporates the relevant Aquaculture Industry Development Plan under the *Fisheries Management Act 1994* and the assessment regime for integrated aquaculture development), and
- (c) to set out the minimum site location and operational requirements for permissible aquaculture development (the **minimum performance criteria**), and
- (d) to establish a graduated environmental assessment regime for aquaculture development based on the applicable level of environmental risk associated with site and operational factors, and
- (e) to apply the Policy in the first instance to pond-based and tank-based aquaculture development in the North Coast region of the State following the preparation of a strategy for that kind of aquaculture development in that area.

4 Definitions

(1) In this Policy:

aquaculture, fish and **marine vegetation** have the same meanings as in the [Fisheries Management Act 1994](#).

Note—

The [Fisheries Management Act 1994](#) defines **aquaculture, fish** and **marine vegetation** as follows:

aquaculture means:

- (a) cultivating fish or marine vegetation for the purposes of harvesting the fish or marine vegetation or their progeny with a view to sale, or
 - (b) keeping fish or marine vegetation in a confined area for a commercial purpose (such as a fish-out pond),
- but does not include:
- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially), or
 - (d) anything done for the purposes of maintaining a collection of fish or marine vegetation otherwise than for a commercial purpose, or
 - (e) any other thing prescribed by the regulations.

fish:

- (a) means marine, estuarine, or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead), and
- (b) includes:
 - (i) oysters and other aquatic molluscs, and
 - (ii) crustaceans, and
 - (iii) echinoderms, and
 - (iv) beachworms and other aquatic polychaetes, and
- (c) also includes any part of a fish, and
- (d) does not include whales, mammals, reptiles, birds, amphibians or other things excluded from the definition by the regulations.

marine vegetation means any species of plant that at any time in its life must inhabit water (other than fresh water).

aquaculture development means development for the purpose of aquaculture.

aquaculture industry development plan means an aquaculture industry development plan published under Part 6 of the [Fisheries Management Act 1994](#).

Department means the Department of Infrastructure, Planning and Natural Resources.

Director-General means the Director-General of the Department.

intensive aquaculture means aquaculture undertaken by providing supplementary food for the fish or marine vegetation (whether or not naturally occurring food is also consumed or available for consumption by the fish or marine vegetation).

minimum performance criteria—see clauses 7 and 8.

natural water-based aquaculture means aquaculture undertaken in natural waterbodies (including any part of the aquaculture undertaken in tanks, ponds or other facilities such as during the hatchery or depuration phases).

Note—

Typical natural water-based aquaculture is fin fish culture in cages and oyster, mussel or scallop culture on or in racks, strings or cages.

NSW Oyster Industry Sustainable Aquaculture Strategy means the New South Wales Department of Primary Industries publication of that title, as published in 2006.

oyster aquaculture development means development for the purposes of oyster aquaculture.

pond-based aquaculture means intensive aquaculture undertaken predominantly in ponds, raceways or dams (including any part of the aquaculture undertaken in tanks such as during the hatchery or depuration phases), but not including natural water-based aquaculture.

Note—

Typical pond-based aquaculture is the pond culture of prawns, yabbies or silver perch.

priority oyster aquaculture area means an area identified as a priority oyster aquaculture area on a map referred to in Chapter 5.3 of the *NSW Oyster Industry Sustainable Aquaculture Strategy*, being a map a copy of which is held in the head office of the Department of Primary Industries.

tank-based aquaculture means intensive aquaculture undertaken exclusively in tanks, but not including natural water-based aquaculture.

Note—

Typical tank-based aquaculture is the tank culture of barramundi or abalone.

the Act means the [Environmental Planning and Assessment Act 1979](#).

(2) Notes in this Policy and the table of contents do not form part of this Policy.

5 Where this Policy applies

This Policy applies:

(a) in relation to pond-based or tank-based aquaculture—to the parts of the State

described in clause 1 of Schedule 1, and

(b) in relation to natural water-based aquaculture in the form of oyster aquaculture—to the State, and

(ba) in relation to other forms of natural water-based aquaculture—to the parts of the State described in Schedule 2.

Note—

At the commencement of this Policy, there were no areas set out in Schedule 2 to which the Policy applies.

5A Development to which this Policy applies

(1) This Policy, other than Part 3A, applies to aquaculture development.

(2) Part 3A applies to all development.

6 Relationship to other environmental planning instruments

(1) In the event of an inconsistency between this Policy and another environmental planning instrument whether made before or after this Policy, this Policy prevails to the extent of the inconsistency, subject to section 36 (4) of the Act.

(2) *State Environmental Planning Policy No 1—Development Standards* does not apply to aquaculture development to which this Policy applies.

Part 2 Permissible aquaculture development

7 Pond-based and tank-based aquaculture permissible with consent

(1) This clause applies to development for the purpose of pond-based aquaculture, or tank-based aquaculture, to which this Policy applies.

(2) A person may carry out any such aquaculture development with development consent if, in the opinion of the consent authority, it complies with the site location and operational requirements set out in Schedule 1 for the development (the **minimum performance criteria**).

(3) The requirements set out in Schedule 1 are minimum requirements and do not limit the matters a consent authority is required to take into consideration under the Act or the conditions that it may impose on any development consent.

8 Natural water-based aquaculture (other than oyster aquaculture) permissible with consent

(1) This clause applies to development for the purpose of natural water-based aquaculture to which this Policy applies, other than oyster aquaculture development.

(2) A person may carry out any such aquaculture development with development consent

if, in the opinion of the consent authority, it complies with the site location and operational requirements set out in Schedule 2 for the development (the **minimum performance criteria**).

- (3) The requirements set out in Schedule 2 are minimum requirements and do not limit the matters a consent authority is required to take into consideration under the Act or the conditions that it may impose on any development consent.

8A Oyster aquaculture development permissible

- (1) A person may carry out oyster aquaculture development only with development consent, except as provided by subclause (3).
- (2) The consent authority for oyster aquaculture development is the council of the area in which the development is to be carried out.

Note—

Sections 19 and 20 of the [Marine Parks Act 1997](#) impose requirements relating to a determining authority's approval, or carrying out, of an activity within a marine park and a consent authority's consideration of a development application for the carrying out of development within a marine park.

- (3) A person may carry out oyster aquaculture development without the need for development consent:
 - (a) on any land that is wholly within a priority oyster aquaculture area, or
 - (b) on any land that is partly within and partly outside a priority oyster aquaculture area, but only if the land outside the area is no more than 0.1 hectare in area.

9 Consent authority for permissible aquaculture

The consent authority for development to which this Policy applies (other than oyster aquaculture development) is as follows:

- (a) the consent authority (if any) designated in Schedule 1 or 2,
- (b) if there is no consent authority under paragraph (a)—the authority that would be the consent authority for the development but for this Policy,
- (c) if there is no consent authority under paragraphs (a) and (b)—the council of the area in which the development is to be carried out,
- (d) if there is no consent authority under paragraphs (a)–(c)—the Minister.

10 Consent authority to take aquaculture industry development plan into consideration

- (1) In determining a development application for aquaculture development to which this Policy applies, the consent authority is to take into consideration such of the provisions of any aquaculture industry development plan as are relevant to the subject of the development application.

- (2) Without limiting subclause (1), in determining a development application for oyster aquaculture development the consent authority is to take into consideration the *NSW Oyster Industry Sustainable Aquaculture Strategy*.

11 Other aquaculture development prohibited

Aquaculture development to which this Policy applies that is not permissible (whether with or without consent) under this Policy with development consent is prohibited.

Part 3 Determination of assessment category of aquaculture development

12 Project profile analysis

- (1) For the purposes of this Policy, the Director-General is to publish in the Gazette a project profile analysis for any particular kind of aquaculture development in any particular part of the State.
- (2) A project profile analysis is a matrix of environmental and operational criteria for ranking the level of environmental risk in relation to site location and operational attributes of aquaculture development. There are to be 3 levels of risk for each attribute (Level 1, 2 or 3 in ascending order of risk).
- (3) The criteria in a project profile analysis are to be consistent with the relevant aquaculture industry development plan.
- (4) A project profile analysis must be reviewed by the Director-General when the relevant aquaculture industry development plan is amended or replaced.
- (5) This clause does not apply with respect to oyster aquaculture development.

Note—

Suitability of sites for oyster aquaculture development is to be assessed having regard to the *NSW Oyster Industry Sustainable Aquaculture Strategy*—see clause 10.

13 Categorisation of development having regard to project profile analysis

- (1) For the purposes of determining the level of assessment of applications for development consent under this Policy, the proposed aquaculture development is to be categorised in accordance with the opinion of the consent authority formed having regard to the relevant project profile analysis, as follows:
 - (a) Class 1—Non-designated development (low-level risk),
 - (b) Class 2—Non-designated development (medium-level risk),
 - (c) Class 3—Designated development.
- (2) The relevant class is to be determined as follows:

- (a) Class 1—if all the risk levels in relation to each attribute are Level 1,
 - (b) Class 2—if all the risk levels in relation to each attribute are Level 2 or Levels 1 and 2,
 - (c) Class 3—if any risk level in relation to an attribute is Level 3.
- (3) The consent authority is not to consent to aquaculture development under this Policy unless it has first categorised the development in accordance with this clause after receiving adequate information from the applicant for that purpose.
- (4) This clause does not apply with respect to oyster aquaculture development.

14 Designated development

- (1) Development categorised as Class 3 aquaculture development is designated development for the purposes of the Act.
- (2) Development categorised as Class 1 or 2 aquaculture development is not designated development by virtue of any other environmental planning instrument.

Note—

Designated development must be advertised for 30 days. The regulations under the Act provide that aquaculture development to which this Policy applies is designated development under the regulations only if it is Class 3 development.

15 Advertised development

- (1) Development categorised as Class 1 or 2 aquaculture development is advertised development for the purposes of the Act.
- (2) Class 2 aquaculture development must be advertised for at least 30 days, even though the regulations under the Act may only require the development to be advertised for at least 14 days.

Note—

Class 1 aquaculture development is, by the regulations under the Act, required to be advertised for at least 14 days.

Part 3A Consideration of effects of proposed development on oyster aquaculture

15A Application of Part

This Part applies to all development and all land.

15B Consultation with Director-General of Primary Industries

- (1) Before determining a development application for any development, a consent

authority:

- (a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and
 - (b) if it suspects that the development may have that effect, must give notice of the application to the Director-General of the Department of Primary Industries.
- (2) In determining a development application for any development, a consent authority must consider any comments received from the Director-General of the Department of Primary Industries pursuant to subclause (1), including, in particular, such comments as identify:
- (a) any adverse effect that the development may have on, or ways in which the development may impede or be incompatible with, any oyster aquaculture development or priority oyster aquaculture area, and
 - (b) any measures to avoid or minimise any such adverse effect, impediment or incompatibility.

Note—

Development may be incompatible with or impede oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters and of consumers of those oysters.

- (3) This clause does not require a consent authority to consider any comments received more than 21 days after notice was given as referred to in subclause (1) (b).

15C Development consent may be refused if development adversely affects oyster aquaculture

A consent authority may refuse to grant consent to development:

- (a) if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with:
 - (i) any oyster aquaculture development that is being carried out (whether or not within a priority oyster aquaculture area), or
 - (ii) any oyster aquaculture development that may in the future be carried out within a priority oyster aquaculture area, or
- (b) if it is not satisfied that appropriate measures will be taken to avoid or minimise any such adverse effect, impediment or incompatibility.

15D NSW Oyster Industry Strategy to be considered

In exercising their functions under this Part, a consent authority and the Director-General

of the Department of Primary Industries must each take into consideration the *NSW Oyster Industry Sustainable Aquaculture Strategy*.

Part 4 Miscellaneous

16 Existing development

- (1) This Policy applies if development consent is sought for any alteration of or addition to existing aquaculture development.
- (2) However, the Minister may waive (with or without conditions) any of the minimum performance criteria in connection with the continuation of any existing aquaculture development (including the re-establishment of aquaculture development in an area in which aquaculture was abandoned before the commencement of this Policy).
- (3) In this clause, ***existing aquaculture development*** means aquaculture development being undertaken in an area when this Policy first applies to that area.

17 Non-intensive pond-based or tank-based aquaculture not affected

This Policy does not apply to or affect any development for the purpose of aquaculture that is neither intensive aquaculture nor natural water-based aquaculture.

18 Application of amendments made by SEPP 62 (Amdt No 1)

The amendments made to this Policy by [State Environmental Planning Policy No 62—Sustainable Aquaculture \(Amendment No 1\)](#) extend to a development application made but not finally determined before the amendments commence.

19 Application of amendments made by SEPP No 62—Sustainable Aquaculture (Amendment No 3)

An application for or with respect to:

- (a) an approval under Part 3A of the Act, or
- (b) development consent under Part 4 of the Act,

in relation to oyster aquaculture development, being an application that was made but not finally determined before the commencement of [State Environmental Planning Policy No 62—Sustainable Aquaculture \(Amendment No 3\)](#), is to be determined as if that Policy had not commenced.

Schedule 1 Pond-based and tank-based aquaculture

(Clauses 5 and 7)

Part 1 Regions to which Policy applies

1 Regions to which Policy applies

- (1) **North Coast Region** The area of the State comprising the local government areas of Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour City, Greater Taree City, Hastings, Kempsey, Kyogle, Lismore City, Nambucca, Richmond Valley and Tweed.
- (2) **Hunter and Central Coast Region** The area of the State comprising the local government areas of Cessnock City, Dungog, Gloucester, Gosford City, Great Lakes, Lake Macquarie, Maitland City, Muswellbrook, Newcastle City, Port Stephens, Singleton, Upper Hunter and Wyong.

Part 2 Minimum performance criteria for permissible development

Division 1 Site location requirements—North Coast Region

1A Application of Division

Despite clause 5 (a) of this Policy, this Division applies only to those areas of the State described in clause 1 (1) of this Schedule.

2 Zoning under environmental planning instrument

- (1) Pond-based aquaculture—within areas zoned for rural purposes.
- (2) Tank-based aquaculture—within areas zoned for rural purposes or zoned for industrial purposes.

3 Acceptable areas for estuarine pond-based aquaculture

Within an area coloured green on the Estuarine Aquaculture maps deposited in the head office of the Department and marked as follows:

1	Tweed River Estuary	Edition 2, January 2000
2	Brunswick River Estuary	Edition 2, January 2000
3	Richmond River Estuary	Edition 2, January 2000
4	Clarence River Estuary	Edition 2, January 2000
5	Bellinger and Kalang River Estuaries	Edition 2, January 2000
6	Nambucca River Estuary	Edition 2, January 2000
7	Macleay River Estuary	Edition 2, January 2000

8	Hastings River Estuary	Edition 2, January 2000
9	Camden Haven River Estuary	Edition 2, January 2000
10	Manning River Estuary	Edition 2, January 2000

4 Elevation Australian Height Datum (AHD) for tank-based aquaculture and freshwater pond-based aquaculture

- (1) Within an area the mean elevation of which is above 1 metre AHD.
- (2) In this clause, a reference to **AHD** is a reference to Australian Height Datum within the meaning of the [Surveying Act 2002](#).

5 Landform exclusion zones (high acid sulphate soils risk areas)

Not within ASS risk codes EsO, EcO, EuO or Em shown on Acid Sulphate Soils Risk Maps published by the Department of Land and Water Conservation.

6 Flood liability

- (1) Not within an area subject to flooding in the case of high risk species (having regard to the probable maximum flood level).
- (2) High risk species are species designated as high risk species in the relevant aquaculture industry development plan (eg barramundi).

7 Conservation exclusion zones

Not within:

- (a) areas dedicated or reserved under the [National Parks and Wildlife Act 1974](#), or
- (b) marine parks or aquatic reserves (other than areas designated as general use zones),
or
- (c) vacant Crown land (other than areas used only for access to water provided under a licence).

Division 1A Site location requirements—Hunter and Central Coast Region

7A Application of Division

Despite clause 5 (a) of this Policy, this Division applies only to those areas of the State described in clause 1 (2) of this Schedule.

7B Acceptable areas for estuarine pond-based aquaculture

Within an area coloured green on either of the following maps, deposited in the head

office of the Department:

(a) *Estuarine Aquaculture Map 11, Port Stephens Estuary* (dated 25 May 2003), or

(b) *Estuarine Aquaculture Map 12, Hunter River Estuary* (dated 25 May 2003).

7C Zoning under environmental planning instrument in the Hunter and Central Coast Region

(1) Pond-based aquaculture—for land to which an environmental planning instrument listed in Column 1 of the table to this clause applies, in the zones listed in Column 2 opposite the name of that instrument.

(2) Tank-based aquaculture—for land to which an environmental planning instrument listed in Column 1 of the table to this clause applies, in the zones listed in Column 3 opposite the name of that instrument.

Table

Column 1	Column 2	Column 3
Environmental planning instrument	Pond-based aquaculture	Tank-based aquaculture
<i>Cessnock Local Environmental Plan 1989</i>	1 (a) Rural “A”	1 (a) Rural “A” 1 (a1) Rural “A1” 4 (a) Industrial 4 (b) Light Industrial
<i>Dungog Local Environmental Plan 1990</i>	1 (b) General Rural 1 (d) Rural Farmlets	1 (b) General Rural 1 (d) Rural Farmlets 4 (a) General Industrial 4 (b) Light Industrial
<i>Gloucester Local Environmental Plan 2000</i>	1 (a) Rural 7 (d) Environment Protection (Scenic)	1 (a) Rural 4 (a) Industrial 7 (d) Environment Protection (Scenic)
<i>Interim Development Order No 122—Gosford</i>	1 (a) Rural (Agriculture) 1 (b) Rural (Highway Protection) 7 (b) Conservation and Scenic Protection (Scenic Protection)	1 (a) Rural (Agriculture) 1 (b) Rural (Highway Protection) 4 Industrial (Extractive)
<i>Gosford Planning Scheme Ordinance</i>		4 (a) Industrial (General) 4 (b) Industrial (Light)
<i>Great Lakes Local Environmental Plan 1996</i>	1 (a) Rural	1 (a) Rural 3 (d) Special Business Waterfront 4 (a) General Industrial

<i>Lake Macquarie Local Environmental Plan 2004</i>	1 (1) Rural (Production) 9 Natural Resources	1 (1) Rural (Production) 1 (2) Rural (Living) 4 (1) Industrial (Core) 4 (2) Industrial (General) 9 Natural Resources
<i>Maitland Local Environmental Plan 1993</i>	1 (a) Prime Rural Land 1 (b) Secondary Rural Land	1 (a) Prime Rural Land 1 (b) Secondary Rural Land 4 (a) General Industrial 4 (b) Light Industrial
<i>Merriwa Local Environment Plan 1992</i>	1 (a) General Rural	1 (a) General Rural 4 (a) Industrial
<i>Murrurundi Local Environmental Plan 1993</i>	1 (a) Rural "A"	1 (a) Rural "A"
<i>Muswellbrook Local Environmental Plan 1985</i>	1 (a) Rural "A" 5 (a) Special Use (Power Station)	1 (a) Rural "A" 4 (a) General Industrial 4 (b) Light Industrial 5 (a) Special Use (Power Station) 7 (L1) Environment Protection General (L1) (Alluvial Areas)
<i>Newcastle Local Environmental Plan 1987</i>		1 (a) Rural 4 (a) Light Industrial 4 (b) General Industrial 4 (c) Eco-industrial
<i>Newcastle Local Environmental Plan 2003</i>	7 (a) Conservation	4 (a) Urban Services 4 (b) Port and Industry 4 (c) Steel River
<i>Port Stephens Local Environmental Plan 2000</i>	1 (a) Rural Agriculture "A" 1 (c1) Rural Small Holdings "C1" 6 (a) General Recreation "A" 6 (c) Special Recreation "C" 7 (a) Environment Protection "A" 7 (f1) Environment Protection "F1" (Coastal Lands)	1 (a) Rural Agriculture "A" 1 (c1) Rural Small Holdings "C1" 1 (c2) Rural Small Holdings Zone "C2" 4 (a) Industrial General "A" 6 (a) General Recreation "A" 6 (c) Special Recreation "C" 7 (f1) Environment Protection "F1" (Coastal Lands)
<i>Scone Local Environmental Plan 1986</i>	1 (d) Rural Holdings 1 (e) General Agricultural 1 (i) Intensive Agricultural 1 (s) Small Farm	1 (d) Rural Holdings 1 (e) General Agricultural 1 (i) Intensive Agricultural 1 (s) Small Farm 4 (a) General Industrial

<i>Singleton Local Environmental Plan 1996</i>	1 (a) Rural	1 (a) Rural 4 Industrial
<i>Wyong Local Environmental Plan 1991</i>	1 (a) Rural 7 (b) Scenic Protection	1 (a) Rural 4 (a) General Industrial 4 (b) Light Industrial 4 (e) Regional Industrial and Employment Development 7 (b) Scenic Protection

7D Conservation exclusion zones

Not within:

- (a) areas dedicated or reserved under the *National Parks and Wildlife Act 1974*, or
- (b) marine parks or aquatic reserves (other than areas designated as general use zones), or
- (c) vacant Crown land (other than areas used only for access to water provided under a licence).

Division 2 Operational requirements—all regions

8 Species selection

Species of fish or marine vegetation cultivated or kept must be consistent with the relevant Aquaculture Industry Development Plan.

Note—

Refer to policy in the Plan relating to translocation of live aquaculture organisms. Under the Plan, non-indigenous species are not cultivated or kept for purposes of estuarine pond-based aquaculture.

9 Pond-based aquaculture—pond design

Ponds, raceways or dams capable of being drained or pumped and then completely dried.

10 Freshwater discharges

No discharge of freshwater used to cultivate or keep fish or marine vegetation to natural waterbodies or wetlands.

11 Saline discharges

All saline water discharged from an aquaculture farm (except tanks and raceways) must be held in a reconditioning system for a minimum of 24 hours prior to discharge and must be returned to the tidal reaches of the waterway.

12 Outlets from ponds etc

All outlets from ponds, tanks and other facilities must be screened to avoid the escape of fish.

Schedule 2 Natural water-based aquaculture

(Clauses 5 and 8)

Part 1 Areas to which Policy applies

Part 2 Minimum performance criteria for permissible development

Note—

This Schedule was blank on the commencement of this Policy.