

Marine Aquaculture Performance Bonds

Please note, when implementing this policy you must consider whether any human rights are engaged under the *Human Rights Act 2019* and whether any limitations on human rights are reasonable and justifiable. If you engage a human right you should conduct a proportionality assessment under the Act. This policy has been reviewed on 03/08/21 to ensure actions and decisions under this policy can be made in a way that is compatible with human rights.

1 Policy statement

The policy provides that the State of Queensland (the State), acting through the Department of Agriculture and Fisheries (the Department), requires the lodgement of a performance bond, in the form of a bank guarantee, by the holder of a resource allocation authority (RAA) to recover costs of any maintenance or rehabilitation works that may be required in an approved aquaculture area, including the removal of any abandoned aquaculture infrastructure. This policy also establishes a process for calculating the value of the bank guarantee and outlining the circumstances when the bank guarantee will be utilised by the Department.

2 Background and context

The marine aquaculture sector in Queensland is currently a small component of Queensland's broader aquaculture industry. Marine aquaculture includes approximately 100 oyster areas primarily located in Moreton Bay and a small number in Hervey Bay. Several pearl oyster areas are located mainly in northern Queensland and a small number of marine ranching areas exist.

Two approvals are required for marine aquaculture in Queensland, a development approval issued under the *Planning Act 2016* and an RAA issued under the *Fisheries Act 1994* (the Act). The development approval is issued in perpetuity for the area in which the aquaculture development takes place. The development approval allows for the aquaculture development to be undertaken. The RAA is issued for a maximum period of up to 30 years and is transferable. The RAA provides permission to access public waters for the purpose of aquaculture.

There is a community expectation that marine aquaculture areas are cleared of infrastructure once they are no longer being used for that purpose and that public money is not used to achieve this. Abandoned aquaculture areas that are not cleaned up present a danger to maritime navigation and impact on the visual amenity of the area. It is the responsibility of the RAA holder to ensure that all aquaculture infrastructure is removed from the area.

It is a condition of the RAA that the aquaculture area is marked correctly and is free from waste material and debris at all times. It is also a condition that on cessation of the aquaculture operations, cancellation, surrender or prior to any transfer of the aquaculture operations, the area must be clean and tidy. All infrastructure associated with the aquaculture activity must be removed and disposed of

appropriately when there is a cessation, cancellation or surrender of the RAA. Clean up must be completed within a maximum of three months of cessation, cancellation, or surrender of the RAA. Non-compliance with this condition has a maximum penalty of 100 penalty units (section 79A of the Act).

Section 61 of the Act provides provisions to impose reasonable and relevant conditions on an RAA for aquaculture which can include the requirement for payment of a bond to ensure the holder will comply with the conditions of the RAA.

Under section 124 of the Act, the chief executive may take action reasonably necessary to rehabilitate or restore an aquaculture area where there is a failure to comply with a condition of the RAA, and recover costs reasonably incurred in rehabilitating or restoring the area. The chief executive may also issue a restoration notice under section 125 of the Act requiring the holder of the RAA to take action about the polluting matter within the timeframe specified in the notice. If there is a failure to comply with the notice the chief executive may take action to ensure that the restoration work is completed and recover costs reasonably incurred in taking the action. Despite the powers within the Act to address the rehabilitation of marine aquaculture areas, a simple and more efficient mechanism to enable the State to recover costs associated with any maintenance or rehabilitation works for marine aquaculture areas is preferred. Particularly in cases where the operator is no longer financially viable and/or has abandoned the area.

Performance bonds are used as a policy instrument in a number of natural resource management contexts to help ensure costs of any rehabilitation is incurred by the parties undertaking the activity. Arrangements for performance bonds vary but the two general approaches are either an upfront, refundable performance bond (in the form of a cash deposit or bank guarantee) or a non-refundable, annual contribution to a rehabilitation trust fund. Under this policy, an upfront, refundable bank guarantee is required.

3 Application/Scope

This policy applies to all holders of an RAA issued under the Act for the purpose of aquaculture, with the exception of aquaculture ranching operations. As aquaculture ranching areas have no structures associated with the operation, they present a low risk of requiring site maintenance and rehabilitation. Therefore, aquaculture ranching operations are not subject to the requirement of a performance bond.

4 Abbreviations, acronyms and definitions

Term, acronym	Definition
The Act	<i>Fisheries Act 1994</i>
Aquaculture	As defined under schedule 1 of the Act
Aquaculture ranching	The culture of animals without containment structures
Clean up	The removal of all infrastructure associated with the aquaculture operation from the approved aquaculture area.

Term, acronym	Definition
The department	<i>Department of Agriculture and Fisheries</i>
RAA	<i>Resource Allocation Authority</i>

5 Key principles

5.1 Requirement for a performance bond

The requirement for a performance bond will be implemented as a condition of an RAA issued under the Act for the purpose of aquaculture, with the exception of aquaculture ranching operations. This includes all aquaculture that is carried out in Queensland waters or on unallocated tidal land.

The required performance bond is to be in the form of a bank guarantee. The bank guarantee must be provided by an approved security provider, guaranteeing to indemnify the Department to the specified amount. An approved security provider is defined under the *Financial and Performance Management Standard 2019* as:

- (a) a financial institution rated by—
 - (i) Fitch Ratings with a long-term credit rating not less than A-; or
 - (ii) Moody's Investors Service with a long-term credit rating not less than A3; or
 - (iii) Standard & Poor's with a long-term credit rating not less than A-; or
- (b) an insurance company rated by—
 - (i) Fitch Ratings with an insurance claims-paying ability rating not less than A-; or
 - (ii) Moody's Investors Service with an insurance financial strength rating not less than A3; or
 - (iii) Standard & Poor's with an insurer financial strength rating not less than A-; or
- (c) the Queensland Treasury Corporation; or
- (d) a guarantee provider approved by the Treasurer or a nominated officer under section 35 as an approved security provider.

No actual payment is required to the Department, but written evidence of such arrangements must be provided.

The requirement for the performance bond is to be implemented by the following condition on the RAA:

Performance Bond Condition

- (a) Prior to commencing any activities under this authority, the holder must submit to the Department a Performance Bond in the form of an unconditional bank guarantee to the value of \$ [enter amount] from an approved security provider as defined under the *Financial and Performance Management Standard 2019* (**Performance Bond**).
- (b) The authority holder must replace the Performance Bond with a **New Performance Bond** in the form of an unconditional bank guarantee from an approved security provider as defined

under the *Financial and Performance Management Standard 2019*, to allow for any increase in Salvage Costs over time:

- (i) every 5 years; or
- (ii) when the current bank guarantee expires; or
- (iii) prior to commencing any expansion activities involving additional infrastructure not considered under the Performance Bond in part (a) of this condition

(New Performance Bond):

- (c) The value of the New Performance Bond, for the costs associated with the clean up of the approved aquaculture area and the removal and appropriate disposal of any aquaculture furniture, infrastructure or other material, including waste material and debris from that area (Salvage Costs), shall be determined using a combination of:
 - (i) salvage quotes sourced by the applicant or the Department;
 - (ii) comparison of performance bond amounts for other similar activities in recent years; and
 - (iii) 'standard' or guideline amounts that may be developed by the Department.
- (d) The authority holder must provide a minimum of two salvage quotes for Salvage Costs to the Department when a New Performance Bond is required under condition part (b) of this condition.
- (e) The Department will return the Performance Bond to the authority holder once the Department has received the New Performance Bond which complies with the requirements of parts (c) and (d).
- (f) The Department may use all or part of the Performance Bond or the New Performance Bond at any time during the currency of this authority to reimburse the Department for any costs incurred by the chief executive in taking action.
- (g) If the Department uses all or part of the Performance Bond or the New Performance Bond to reimburse the Department for any costs incurred by the chief executive in taking action under section 124(1) or section 125(4) of the *Fisheries Act 1994* under part (f) of this condition, the authority holder must reinstate the value of the performance bond to its value immediately preceding such action by giving the Department:
 - (i) an Additional Performance Bond in the form of an unconditional bank guarantee from an approved security provider as defined under the *Financial and Performance Management Standard 2019* for the amount of the bond used by the Department under part (f) of this condition; or
 - (ii) a New Performance Bond in the form of an unconditional bank guarantee from an approved security provider as defined under the *Financial and Performance Management Standard 2019* as per part (c) of this condition for the total amount of the bond amount (that is, the amount of the bond used by the Department and the un-used amount of the bond). The Department will return the earlier performance bond to the authority holder on receipt of the replacement bond under this clause.
- (h) The Department may use all or part of the Performance Bond, New Performance Bond or Additional Performance Bond to reimburse the Department for any costs incurred by the chief executive in taking action because of the authority holder's failure to comply with condition [insert condition number] of this authority.
- (i) The Performance Bond, New Performance Bond or Additional Performance Bond will be released by the Department and returned to the authority holder:
 - (i) if this authority is cancelled or surrendered, when the Department is satisfied that the authority holder has fully complied with its obligations under condition [insert condition number] of this authority; or
 - (ii) if this authority is transferred, once the transferee has submitted to the Department a replacement performance bond in the form of an unconditional bank guarantee from an approved security provider as defined under the *Financial and Performance*

Management Standard 2019 to the same value as the performance bond/s it is replacing.

5.2 Calculation of the value of the performance bond

The total cost to clean up an aquaculture farm varies depending on the type of aquaculture being undertaken, the total area of the aquaculture farm, and the location of the farm. The locality of the aquaculture site relative to port amenities can have a significant bearing on site maintenance and clean up costs, especially given the remote location of some pearl farms in north Queensland. Therefore, each authority holder is required to have an individual performance bond that reflects the costs of rehabilitating their aquaculture operation.

The value of the performance bond will be determined using a combination of:

- i. salvage quotes sourced by the applicant or the Department; and
- ii. comparison performance bond amounts for other similar activities in recent years; and
- iii. 'standard' or guideline amounts that may be developed by the Department.

Applications for an RAA are required to include valid salvage quotes (a minimum of two valid quotes) obtained from private contractors for costs associated with the removal of the proposed aquaculture infrastructure. The quotes are to be calculated in accordance with the nature of the infrastructure to be removed and the total area of the farm.

To allow for any increase in salvage costs over time, the performance bond is to be replaced with a new performance bond:

- i. every 5 years; or
- ii. when the current bank guarantee expires; or
- iii. prior to commencing any expansion activities involving additional infrastructure not covered under the existing performance bond.

At this time, the authority holder is required to provide a minimum of two new valid salvage quotes which, as outlined above, will be used in combination to calculate a new value for the performance bond.

5.3 When performance bonds will be used

A performance bond may be utilised in the following circumstances:

- for general site maintenance (removal of waste material or debris)
- clean up of the site once the aquaculture operation ceases.

It is a requirement that whilst a farm is operating an aquaculture area it must be marked correctly and free from waste material and debris. Upon cancellation or surrender of the RAA, all infrastructure associated with the aquaculture activity must be removed and disposed of appropriately within three months.

Where there is a failure to comply with these conditions, authority holders will receive written notification from the Department advising of any site maintenance or clean up issues that are required to be rectified on the aquaculture area and timeframes to complete the work. If the authority holder

fails to undertake the work within the specified timeframe without providing reasonable justification, the Department will arrange for the required works to be carried out and retain whole or part of the bank guarantee to recover the cost of the works. The bank guarantee is to be utilised as a last resort when all reasonable measures to rectify the site issues with the authority holder have failed or not been actioned satisfactorily.

If the Department uses all or part of the performance bond the authority holder must reinstate the value of the performance bond to its value immediately preceding such action. This can be achieved by providing an additional performance bond for the amount of the bond used by the Department or a new performance bond for the total amount of the bond amount (that is, the amount of the bond used by the Department and the un-used amount of the bond). The Department will return the earlier performance bond to the authority holder on receipt of the replacement bond.

5.4 Performance bond no longer required

Provided that there are no clean up issues associated with an aquaculture area, once an authority holder transfers or surrenders an RAA, or the RAA is cancelled, the Department will release the bank guarantee back to the authority holder.

6 Reference documents

Relevance	Reference Information
Legislation	<i>Fisheries Act 1994</i>
	Available at: https://www.legislation.qld.gov.au/
	<i>Planning Act 2016</i>
	Available at: https://www.legislation.qld.gov.au/
	Financial and Performance Management Standard 2019
	Available at: https://www.legislation.qld.gov.au/
Queensland Treasury	Financial Accountability Handbook Information Sheet 3.16 –
	Contract Performance Guarantees
	Available at: https://www.treasury.qld.gov.au/resource/financial-accountability-handbook/
DAF Financial Management Practice Manual (FMPM)	FMPM Section 2.21 Contract Performance Guarantees - Financial Securities
	FMPM Section 2.33 Registers Required
	Available at: https://dafintranet.lands.resnet.qg/business-operations/finance/fmpm

7 Document management

Owner Management and Reform
Endorsed by Director (Management & Reform)
Approved by Executive Director (Fisheries)

Revision history

Version no.	Approval date	Comments
1.00	19/08/2013	Approved Policy
1.01	03/08/2021	Adjustment to how the performance bond is calculated, update to Performance Bond Condition and minor formatting.

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