

Code of Practice

Marine Management

Fish Habitat Area Code of Practice

Fish Habitat Area Code of Practice- The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Fisheries Act 1994

Contents

Definitions and acronyms	3
Introduction	5
Purpose of the Code of Practice	5
Overview	5
About declared FHAs	6
Acceptable physical, pesticide and biological controls	6
Access requirements	6
Control of pest plants	6
Physical removal	6
Control using fire	7
Control using pesticides	7
Biological control	7
Control of mosquitoes	8
Control using pesticides	8
Biological control	9
Control of pest animals and noxious fish	9
Control using pesticides	9
Biological control	10
Notification	10
Contact details	10

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Definitions and acronyms

Aerial distribution: means spraying, spreading or dispersing, whether intentionally or not, from an aircraft in flight.

APVMA: Australian Pesticides and Veterinary Medicines Authority.

Authorised person: is an individual who has the appropriate experience and where required the appropriate qualifications/licences, to legally perform a pest control activity under a law of the State or Commonwealth.

Biological control: of a pest, means controlling the presence or spread of the pest by introducing a natural enemy of the pest, including, for example, a natural predator of the pest or a bacteria or virus that may be harmful to the pest.

Biosecurity Act: means the *Biosecurity Act 2014*

Biosecurity Regulation: means the Biosecurity Regulation 2016

Bti: *Bacillus thuringiensis*, a bacterium used for the control of mosquito larvae.

DAF: Queensland Department of Agriculture and Fisheries.

Declared Fish Habitat Area: an area that is declared under the *Fisheries Act 1994* to be a fish habitat area. This has the same meaning as 'Fish Habitat Area'.

Fire sensitive community: means a community that does not require fire for regeneration and fire may irreversibly alter the species composition and structure of the community e.g. wetlands, saltmarsh, dune communities, mangroves etc.

Fish Habitat Area Code of Practice (FHA CoP): the code of practice under section 125A of the *Fisheries Act 1994* called 'Fish Habitat Area Code of Practice—the lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area', published by the department (this document).

Fisheries Act: means the *Fisheries Act 1994*.

Fisheries Regulation: means the Fisheries (General) Regulation 2019.

Integrated management plan: is a document developed and implemented by Local Government or a land management authority. The Plan must include:

- a) the pest species to be controlled,
- b) the location where pest control will occur,
- c) the declared Fish Habitat Area(s) affected,
- d) details of the pest control (e.g. physical control, lopping shears), and
- e) the scheduling of pest control activities in each 12 month period.

Note any off-label pesticide use must be approved by the APVMA and noted in the integrated management plan.

LGAQ: Local Government Association of Queensland.

Marine plant: means as defined in section 8 of the Fisheries Act, which includes the following:

- a plant (a "tidal plant") that usually grows on, or adjacent to, tidal land, whether it is living, dead, standing or fallen;
- material of a tidal plant, or other plant material on tidal land;

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

- a plant, or material of a plant, prescribed under a regulation or management plan to be a marine plant.

Marine plant does not include a plant that is –

- (a) prohibited matter or restricted matter under the *Biosecurity Act 2014*; or

Notes—

1 See the *Biosecurity Act 2014*, schedule 1 or schedule 2.

2 See also the note to the *Biosecurity Act 2014*, schedules 1 and 2.

- (b) controlled biosecurity matter or regulated biosecurity matter under the *Biosecurity Act 2014*.

Examples of marine plants include saltmarsh/salt couch species, mangroves, seagrasses, and may include *Melaleuca* and *Casuarina* species which occur within and adjacent to certain tidal plant communities.

MMCoPQ: Mosquito Management Code of Practice for Queensland.

Noxious fish: a fish listed as noxious fish prohibited matter or noxious fish restricted matter under the *Biosecurity Act 2014*, or non-indigenous fisheries resources under the *Fisheries Act 1994* that are fish.

DES: Queensland Department of Environment and Science.

Off-label use: Australian law requires all agricultural and veterinary chemical products sold in Australia to be registered by the Australian Pesticides and Veterinary Medicines Authority (APVMA). If the chemical product is needed for a use not specified on the label, these are termed ‘off-label’ uses. The APVMA considers applications for permits that allow for the legal use of chemical products in ways different from those set out on the product label. Off-label use is illegal if prior approval from APVMA is not given.

Permit: a permit in force under the *Fisheries Act 1994*, unless otherwise specified.

Pest: means

- (a) prohibited or restricted invasive biosecurity matter under the *Biosecurity Act 2014*; or

Notes—

1 See the *Biosecurity Act 2014*, schedule 1 or schedule 2.

2 See also the note to the *Biosecurity Act 2014*, schedules 1 and 2.

- (b) controlled biosecurity matter or regulated biosecurity matter under the *Biosecurity Act 2014*; or (c) a pest or disease declared under a law of the Commonwealth or another state.

Pesticide: has the same meaning as listed in the *Pest Management Act 2001*.

Pest control activity: has the same meaning as in the *Pest Management Act 2001*.

Public health emergency: has the same meaning as in the *Public Health Act 2005*.

Public health risk: has the same meaning as in the *Public Health Act 2005*.

QBFP: Queensland Boating and Fisheries Patrol.

Tidal lands: includes reefs, shoals and other land permanently or periodically submerged by waters subject to tidal influence.

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Introduction

Purpose of the Code of Practice

This Code of Practice (CoP) has been produced to ensure all persons intending to undertake pest management activities within a declared Fish Habitat Area (FHA) do so in accordance with the *Fisheries Act 1994* (the Fisheries Act), minimising the impacts on fish and fish habitats.

Overview

Some operational day-to-day management activities that are undertaken within the boundaries of declared FHAs do not constitute a development under the provisions of the *Planning Act 2016*. These activities still have the potential to damage declared FHAs and therefore cannot be conducted unless performed in accordance with this CoP.

The use of physical, pesticide and biological controls within a declared FHA has the potential to negatively impact on non-target flora and fauna and fish habitat values of the declared area. Section 81 (1) of the *Fisheries (General) Regulation 2019* (the Fisheries Regulation) states that ‘A person must not unlawfully do any of the following in a Fish Habitat Area:

- a) remove weeds
- b) use a pesticide
- c) carry out biological control of a pest.

However, section 81 (1) of the Fisheries Regulation does not apply to a person doing a thing mentioned in subsection (1) if the person does the thing in compliance with the CoP. This CoP has been prepared under the provisions of section 125A of the Fisheries Act to define acceptable physical, pesticide and biological controls for the removal of noxious fish and pest plants and animals, and the control of mosquitoes. The control methods specified in this CoP may be lawfully conducted by an authorised person within a declared FHA without the requirement to hold an approval under the Fisheries Act. Control of mosquitoes through habitat modification (e.g. construction of runnels) does not fall within the scope of this CoP.

This CoP only applies to authorisation of activities in declared FHAs. In some locations, parts of a declared FHA may also be managed as a marine park under the *Marine Parks Act 2004* or a protected area under the *Nature Conservation Act 1992*, or be subject to other non-fisheries management and require separate authorisation.

Pests (plant or animal) are generally listed as a prohibited or restricted invasive biosecurity matter under the *Biosecurity Act 2014* (Biosecurity Act). Controlled biosecurity matters or regulated biosecurity matters under the Biosecurity Act are also considered pests for the purpose of this CoP. Refer to the Department of Agriculture and Fisheries (DAF) website www.daf.qld.gov.au or the above-mentioned legislation for current lists of prohibited and restricted matters.

Land management agencies, State and local governments have a legal responsibility to control pests and mosquitoes on their lands to reduce the existing extent, the spread and the establishment of these species into new areas. In many instances the development and implementation of an integrated management plan will facilitate a multifaceted response to controlling a pest species. The integrated management plan would include details of the different controls to be applied, i.e. physical, pesticide and biological, the scheduling in each 12 month period, and the areas of application.

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Any person conducting pest control activities within a declared FHA must submit a Pre-works advice sheet for the FHA CoP to DES at least 5 business days before commencement of activity. The Pre-works advice sheet can be found at www.des.qld.gov.au by searching 'FHA code of practice'. After submission of the Pre-works advice sheet, the authorised person conducting pest control must adhere to the conditions set out in this CoP.

The offence for non-compliance with this CoP carries a maximum fine of 20 penalty units.

About declared FHAs

Declared FHAs are spatially defined areas containing key fish habitats that are formally declared, protected and managed under the provisions of the Fisheries Act. The intent of the declared FHA program is to ensure that a State-wide network of high quality fish habitats is maintained along the Queensland coast to provide the habitat foundation for the long-term sustainability of the State's fish stocks and fisheries. Declared FHAs protect all habitats within their boundary; this can include tidal and non-tidal lands.

The Department of Environment and Science (DES) is responsible for declared FHAs, a list of declared FHAs is provided in Schedule 3 of the Fisheries Regulation. The official plan for each declared FHA is available on the following website: www.des.qld.gov.au by searching FHA plan.

Acceptable physical, pesticide and biological controls

Access requirements

To carry out pest control methods there may be a requirement to access specific sites within declared FHAs with all-terrain vehicles (ATVs) and trail bikes.

Vehicle use within declared FHAs associated with the implementation of any physical, pesticide and biological controls should be restricted as far as possible to non-tidal lands or existing access tracks. Every effort should be made to minimise vehicle impacts upon the substrate and marine plants within the declared FHA.

Any significant impacts to the substrate that occur (e.g. disturbance from a bogged vehicle) must be addressed by restoring the profile of the substrate. Further advice regarding this matter should be sought from DES (see Contact Details section of this document).

Control of pest plants

Physical removal

Physical removal of pest plants is encouraged and preferred to pesticide control, but this will depend on practicability and the potential for permanent disturbance of the substrate.

Small bar chainsaws and brush cutters are the only motorised tool that may be used within a declared FHA to physically remove pest plants.

Any pest plants removed within the declared FHA are to be lawfully disposed of at least 100 metres landward from the declared FHA boundaries to avoid plant materials re-entering the adjacent tidal lands.

- ✓ Non-motorised equipment such as secateurs, lopping shears, bow saws, pruning saw, spades, shovels, picks, mattocks, crow bars are permitted.
- ✗ Motorised equipment such as mowers, rotary hoes, bobcats are not permitted (except for small-bar chain saws and brush cutters).

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Control using fire

The selective application of fire remains an effective method of controlling a number of pest plant species known to be present within several declared FHAs (e.g. groundsel).

Specific requirements relating to the acceptable use of fire within a declared FHA are:

- Setting of fires within the tidal lands of declared FHAs and/or in close proximity to marine plants is not permitted as it can damage fire sensitive communities and make them susceptible to invasion by exotic plant species. The use of fire is permitted outside of tidal lands within a declared FHA if in compliance with other legislation.
- Setting of fires within non-tidal lands of a declared FHA is permitted provided the fire is excluded from tidal lands and fire sensitive communities through the use of an adequate buffer zone.
- Fire may be used when weather conditions are optimal to avoid the spread of fire to non-target areas (e.g. a Fire Weather Warning has not been issued for the area). Planned burns are generally undertaken from July to August, outside of the 'fire season'.
- Fire may be used provided an integrated management plan has been prepared or approved by the local fire authority. The plan should include details of risk areas and identification and preparation of firebreaks and only be performed by an authorised person.

NOTE: a hot, intense fire can destroy fire sensitive communities such as saltmarsh and mangroves. It is important to provide your 'Permit to light fire' authorisation number from your local fire authority in the Pre-works advice sheet before activities adjoining these communities commence.

Control using pesticides

Selective use of specific pesticides (herbicides) is an effective method of controlling many pest plants. A number of pest plant species (e.g. groundsel) are known to be present within some declared FHAs. The effective control of these plants may require the careful use of herbicides within declared FHAs.

Specific requirements relating to the lawful use of herbicides within a declared FHA are:

- Herbicides must be registered by the APVMA for the control of the targeted pest plants.
- The selected herbicide must be used in accordance with the specifications of the manufacturer (e.g. if the specifications do not allow the use of the herbicide during periods of wind or rain to minimise spread to non-target areas, it must be followed) and must only be applied by an authorised person.
- Broad scale aerial distribution of herbicides is not allowed within a declared FHA.
- Herbicides may only be applied via hand-held equipment, e.g. a backpack spray unit, a controlled droplet applicator, etc., to minimise impacts on non-target vegetation and substrate within the declared FHA. The use of hand-held equipment from an all-terrain vehicle (ATV) is permitted.
- Spraying of herbicides onto a water body to control floating pest plants is not allowed within a declared FHA.

Biological control

Pest plants may be subject to control by the introduction of a specific biological control as part of an integrated management plan. The selective release of biological controls is a preferable alternative to pesticide control methods.

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Release of the biological control agent can only occur after approval is granted under the Commonwealth *Biosecurity Act 2015* and/or under the *Environment Protection and Biodiversity Conservation Act 1999*. The Queensland Biosecurity Regulation 2016 includes a list of approved biological control agents in Queensland.

Additional agents may be permitted for use in Queensland under the Queensland *Biosecurity Act 2014*.

Control of mosquitoes

Upper-intertidal coastal habitats, present within many declared FHAs, may act as temporary breeding sites for a number of disease-carrying mosquito species (e.g. *Ochlerotatus vigilax*). Mosquitoes are recognised as vectors of human diseases such as Ross River virus and Barmah Forest virus.

Queensland Health has overall responsibility under the *Public Health Act 2005* for the control of communicable diseases in Queensland. Effective mosquito management is an important component of the control of these serious diseases.

The use of pesticides (insecticides) by local governments to control juvenile and adult mosquitoes in declared FHAs for public health benefits is accepted as an essential component of the mosquito management strategy for many coastal regions.

Local government is generally tasked with the responsibility for mosquito management in Queensland for public health within declared FHAs. This management has the statutory support of the Medicines and Poisons (Pest Management Activities) Regulation 2021.

Control using pesticides

Only pesticides (insecticides) registered for the control of mosquitoes by the APVMA may be used within a declared FHA. The application of an insecticide within a declared FHA may only be carried out by an authorised person. Pesticides may only be used subject to an integrated management plan having been prepared and approved by local government. The integrated management plan should include details of the different controls to be applied i.e. physical, pesticide and biological.

The Local Government Association of Queensland (LGAQ), in consultation with relevant State Government agencies, prepared the *Mosquito Management Code of Practice for Queensland* (MMCoPQ) in 2014. This Code of Practice expired in 2021 and has not been replaced with a revised version, however the information remains relevant for the purposes of mosquito control within declared FHAs.

The MMCoPQ provides details of the acceptable procedures for the selection and use of pesticides (insecticides) for the control of mosquitoes. The below restrictions apply to insecticide use in declared FHAs:

- Broad scale aerial distribution of insecticide is not allowed within a declared FHA (this does not include Bti). Aerial distribution of an insecticide (e.g. s-methoprene) should only be considered when there is a public health risk or an emergency situation.
- Backpack spraying from ATVs and fogging is allowed.

The MMCoPQ is available on the Business Queensland website (www.business.qld.gov.au) by searching 'mosquito management').

Any off-label use must be approved by Australian Pesticides & Veterinary Medicines Authority (APVMA) and noted in the Pre-works advice sheet for the FHA CoP.

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Biological control

Mosquitoes may be subject to control by the introduction of a specific biological control agent as part of an integrated management plan. The selective release of biological control agents is a preferable alternative to pesticide control methods.

Control of mosquitoes by stocking with indigenous fish recommended by DAF for your drainage division, or through the release of invertebrates such as copepods, is accepted. In Queensland the release of indigenous fish species in public waters requires a General Fisheries Permit issued by DAF. A full list of fish species acceptable for each drainage division can be found here: www.qld.gov.au using keyword search “mosquito control in private dams”.

Aerial distribution of the biological control agent *Bacillus thuringiensis israeliensis* (Bti) may occur in accordance with the manufacturer’s instructions.

Release of biological control agents (other than indigenous fish, invertebrates and Bti) can only occur after approval is granted by Australian Quarantine Inspection Service under the Commonwealth *Biosecurity Act 2015* and/or under the *Environment Protection and Biodiversity Conservation Act 1999*. The Queensland Biosecurity Regulation 2016 includes a list of approved biological control agents in Queensland. Additional agents may be permitted for use in Queensland under the Queensland *Biosecurity Act 2014*.

Control of pest animals and noxious fish

Control using pesticides

Pest animals pose a serious threat to natural ecosystems by destroying habitat and displacing species. Often the most effective control methods for certain pest animals involves the use of a pesticide (poison baits), e.g. 1080 for the control of feral pigs and dogs. The use of pesticide is accepted within declared FHAs for the control of pest animals provided it is in compliance with the specific requirements listed below.

A noxious fish is, or may become, a serious threat to native aquatic communities. A noxious fish, (e.g. tilapia, carp) may invade FHAs to the detriment of fish habitats and indigenous fish species. Effective control of a noxious fish through the use of pesticides is acceptable within the waters of a declared FHA. The use of rotenone, however, is not accepted as it is non-selective and is damaging to all organisms protected within a declared FHA.

Specific requirements relating to the lawful use of pesticides within a declared FHA are:

- Pesticides must be registered by the APVMA for the control of the targeted pest animal or noxious fish.
- The selected pesticide must be used in accordance with manufacturer’s specifications and any other restrictions, e.g. the use of 1080 for the control of pigs is subject to strict regulatory control set down in the Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021.
- Any off-label pest management activities must be approved by APVMA and noted in the Pre-works advice sheet.
- Poison baits may only be used within a declared FHA by authorised person.
- Poison baits must not be placed within the tidal lands of declared FHAs.
- Regular monitoring of the declared FHA must be undertaken during the baiting period to ensure that any poisoned animals located within the declared FHA are removed, where practicable, and

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

appropriately disposed of at least 100 metres landward from the declared FHA boundaries to avoid poison entering the adjacent tidal lands.

- Pesticides use to control or eradicate noxious fish must only be performed in line with current legislation and only carried out by an authorised person.

Biological control

Pest animals may be subject to control by the introduction of a specific biological control agent as part of an integrated management plan. The selective release of biological controls is a preferable alternative to pesticide control methods.

Release of the biological control agent can only occur after approval is granted by Australian Quarantine Inspection Service under the Commonwealth *Biosecurity Act 2015* and/or under the *Environment Protection and*

Biodiversity Conservation Act 1999. The Queensland Biosecurity Regulation 2016 includes a list of approved biological control agents in Queensland. Additional agents may be permitted for use in Queensland under the Queensland *Biosecurity Act 2014*.

Notification

DES must be notified 5 working days prior to entering a declared FHA to undertake a management program using physical, pesticide and/or biological controls. Notification is achieved by submitting the completed Pre-works advice sheet for the FHA CoP. The Pre-works advice sheet can be found at www.des.qld.gov.au by searching 'FHA code of practice'. Notification less than the specified 5 days is acceptable for emergency situations, e.g. outbreak of dengue fever, where an urgent response is required to reduce risk to human health.

The information recorded in the Pre-works advice sheet will be kept for annual reporting purposes and to assist with day-to-day compliance and enforcement of declared FHA management.

Where an integrated management plan has been prepared by an agency or organisation and subsequently attached with the Pre-works advice sheet for the FHA CoP a single, initial notification may cover the controls to be implemented over a period of 12 months.

Contact details

Manager - Marine Protected Area Policy, DES

PO Box 15187

City East QLD 4002

Telephone: 13 QGOV

Email: marine.policy@des.qld.gov.au

The lawful use of physical, pesticide and biological controls in a declared Fish Habitat Area

Human Rights Act 2019 compatibility

The department is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this Code of Practice, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

Ben Klaassen

Signature

28/08/17

Date

Deputy Director-General
Queensland Parks and Wildlife Service and Partnerships
Department of Environment and Science

Enquiries:
Marine Protected Area Policy
Marine.policy@des.qld.gov.au