

State code 12: Development in a declared fish habitat area

Purpose statement

The purpose of the code is to ensure development in a **declared fish habitat area**:

1. is limited to **prescribed development purposes**;
2. maintains the natural condition of **fish habitat** and natural processes in **management A areas**;
3. maintains the current **fish habitat** values and functions of **management B areas**;
4. maintains the community and **fishing** sector's use of the area and access to **fisheries resources**;
5. is designed and located to avoid impacts or, where the **matters of state environmental significance** cannot be reasonably avoided, impacts are reasonably minimised and mitigated;
6. does not result in a **significant residual impact** on a **matter of state environmental significance** unless the **significant residual impact** is acceptable, and an **offset** is provided.

Using this code

Development cannot comply with this code where it is:

- not for one or more **prescribed development purposes**; or
- oyster aquaculture that is not in compliance with the Oyster industry plan for Moreton Bay Marine Park, Department of Agriculture and Fisheries, 2015.

The assessment benchmarks for this code comprise:

- a purpose statement which identifies the overall intent of the code;
- performance outcomes which set benchmarks to achieve the purpose statement of the code;
- acceptable outcomes which identify one way to achieve the relevant performance outcome.

Development complies with the code where:

- it complies with the acceptable outcomes for the performance outcome; or
- it complies with all the performance outcomes, where not complying with the acceptable outcomes; or
- development does not meet relevant performance outcome(s) and SARA determines, on balance, that the development complies with the purpose statement.

Note: Where development is in accordance with a current resource allocation authority, it complies with all the assessment benchmarks of Table 12.1.

This code also includes the glossary of terms for definitions relevant to this code and reference documents; including the guideline **State Development Assessment Provisions Guidance Material: State code 12: Development in a declared fish habitat area**, which provides direction on how to address this code.

Performance outcomes and acceptable outcomes

Table 12.1: Building work or operational works for which a resource allocation authority has not yet been granted

Performance outcomes
Prescribed development purposes
PO1 Development is only undertaken for a prescribed development purpose in a declared fish habitat area .
All development
PO2 Marine plants to be used for revegetation purposes have local provenance and are obtained from within a declared fish habitat area only if: <ol style="list-style-type: none">1. no alternative source of marine plants is feasible; or2. the removal of marine plants has minimal impact on the declared fish habitat area.
PO3 Development for a public or educational purpose is located to optimise public use , benefit or awareness of the declared fish habitat area .
Research including monitoring or education
PO4 Development that is for researching, including monitoring, surveying and investigating or educating, is directly related to one or more of the following: <ol style="list-style-type: none">1. fish, fisheries or fish habitat;2. general biological or ecosystem values or processes within the area;

Performance outcomes
<ol style="list-style-type: none"> protected area management; investigation of impacts of development on the declared fish habitat area; cultural values; experimental trials for a research project.
Structures in a management B area
PO5 Development within a declared fish habitat area : <ol style="list-style-type: none"> directly abuts land that is owned or directly controlled by the applicant (or with the consent of the owner); or is in a location within the declared fish habitat area with State government marine planning arrangements that support the development (e.g. a mooring within a designated or agreed mooring areas).
PO6 For private development that is for the purposes of facilitating fishing or boat access (e.g. installation of a private jetty, pontoon, boat ramp or fishing platform) only one structure or facility is provided per adjoining property and is located entirely within the extension of the side boundaries of that property.
PO7 Private boat mooring: <ol style="list-style-type: none"> where adjoining property, is limited to one mooring located entirely within the extension of the side boundaries of that property; or is installed within a government approved designated mooring area; or is installed in an existing mooring field.
PO8 Development for erosion control purposes (including revetments, groynes and gabions) only occurs where erosion is resulting in an immediate threat to: <ol style="list-style-type: none"> the ability to use the land for its existing or approved purpose; or infrastructure, structures or buildings that are not expendable or not able to be relocated; or a cultural heritage site.
Beach replenishment in a management B area
PO9 Beach replenishment only occurs where erosion is resulting in an immediate threat to: <ol style="list-style-type: none"> the ability to use the land for its existing or approved purpose; or infrastructure, structures or buildings that are not expendable or not able to be relocated; or a cultural heritage site.
PO10 The area that the beach replenishment is to be carried out on is a high-energy, sandy sediment shoreline with biological communities adapted to mobile sediments.

Table 12.2: All building work or operational works

Performance outcomes
All development
PO11 Only those aspects of a development that have a functional requirement to be located within the declared fish habitat area occur within the area. Ancillary elements (for example, car and trailer parks, rest rooms, offices) occur outside the declared fish habitat area .
PO12 The spatial extent of development within the declared fish habitat area is minimised to the greatest extent practical to ensure the integrity of intact habitats.
PO13 Development is designed and constructed to ensure it does not increase the risk of mortality, disease or injury to fish , or compromise the health, productivity, marketability or suitability for human consumption of fish .
PO14 Development maintains or improves water quality.
PO15 Development maintains tidal or stream hydrology and retains natural drainage and inundation patterns.
PO16 Development likely to cause disturbance to potential or actual acid sulfate soil, prevents the release of contaminants.
PO17 Where any temporary benthic disturbance is necessary the pre-disturbance condition is restored, having regard to (amongst other things): <ol style="list-style-type: none"> surface sediment type and profile; bank profile and potential for erosion; and re-establishment by flora and fauna.
PO18 Excess sediment arising from development is managed to avoid further disturbance within the declared fish habitat area .
PO19 Development is designed, sited and constructed such that the need for additional works to ensure long term operation of the development is minimised.
PO20 Development does not adversely impact on:

Performance outcomes
<ol style="list-style-type: none"> community access to fisheries resources and fish habitats including recreational and indigenous fishing access; commercial fishing access and linkages between a commercial, fishery and infrastructure, services and facilities.
Restoration works
PO21 Development which is for restoration ensures the declared fish habitat area returns to pre-existing or improved condition or improves future resilience and recovery.
Constructing a temporary structure
PO22 A temporary structure is in place for a limited period, is designed to facilitate fish movement and be completely removed.
Structures in a management A area that were constructed before the area was declared as a fish habitat area
PO23 Relocation or exchange of an existing structure: <ol style="list-style-type: none"> results in a footprint that is less than or equal to the footprint of the existing structure; improves the condition of fisheries resources and fish habitats, including through water quality outcomes.
PO24 Upgrading or replacement of public sewerage, water treatment and stormwater infrastructure minimises the disturbance footprint within the declared fish habitat area and improves the condition of fisheries resources and fish habitats , including through improved water quality outcomes.
Structures in a management B area
PO25 The establishment of structures or infrastructure does not involve filling of tidal land .
PO26 Development for erosion control purposes (including revetments, groynes and gabions) is designed to achieve the best available erosion management solution from both an erosion management and a fish habitat management perspective.
PO27 Development for erosion control purposes (including revetments, groynes and gabions) does not result in permanent loss of fish habitat beyond the footprint of the structure, other than where caused by minimal regularisation of the foreshore boundary.
Beach replenishment in a management B area
PO28 Beach replenishment does not create terrestrial land , unless it is a sacrificial dune or beach which forms an integral part of the erosion control design.
PO29 The beach replenishment work is undertaken in a way that minimises the need for other erosion control activities or works.
PO30 The beach replenishment work is undertaken in a way that minimises the frequency of any ongoing replenishment requirements.
PO31 A source of replenishment material for future maintenance is identified and secured.
Dredging or extracting sediment
PO32 Dredging or extracting sediment is only undertaken for the purposes of: <ol style="list-style-type: none"> restoring fish habitats or natural processes; or as part of the construction of a structure (e.g. excavating the footings for a boat ramp or revetment wall).
Aquaculture
PO33 Development for aquaculture is only for tidal works associated with oyster production within licensed oyster areas in compliance with the Oyster industry plan for Moreton Bay Marine Park, Department of Agriculture and Fisheries, 2015.
Matters of state environmental significance
PO34 Development is designed and sited to: <ol style="list-style-type: none"> avoid impacts on matters of state environmental significance; or minimise and mitigate impacts on matters of state environmental significance after demonstrating avoidance is not reasonably possible; and provide an offset if, after demonstrating all reasonable avoidance, minimisation and mitigation measures are undertaken, the development results in an acceptable significant residual impact on a matter of state environmental significance.
Statutory note: For Brisbane core port land, an offset may only be applied to development on land identified as E1 Conservation/Buffer, E2 Open Space or Buffer/Investigation in the Brisbane Port LUP precinct plan.

Reference documents

Department of Environment and Science 2022, State Development Assessment Provisions Guidance Material: State code 12: Development in a declared fish habitat area

Department of State Development, Infrastructure and Planning 2014, Significant Residual Impact Guideline

Glossary of terms

Aquaculture see the *Fisheries Act 1994*.

Note: **Aquaculture** means the cultivation of live **fisheries resources** for sale other than in circumstances prescribed under a regulation.

Declared fish habitat area see the *Fisheries Act 1994*.

Note: **Declared fish habitat area** means an area that is declared under the *Fisheries Act 1994* to be a **fish habitat** area. Section 120 of the *Fisheries Act 1994* deals with declaration of **fish habitat** areas.

Designated mooring area see Marine resource management: Management of declared fish habitat areas, Department of National Parks, Sport and Racing, 2015.

Note: **Designated mooring area** means an area designated for moorings under an agreement, plan or legislation by the Department of Agriculture and Fisheries, Department of Transport and Main Roads and/or any other relevant agencies.

Disease see section 94 of the *Fisheries Act 1994*.

Note: **Disease** means:

1. a **disease**, parasite, pest, plant or other thing (the **disease**) that has, or may have, the effect (directly or indirectly) of killing or causing illness in **fisheries resources**, or in humans or animals that eat **fisheries resources** infected with or containing the **disease**
2. a chemical or antibiotic residue
3. a **fish** or plant species that may compete against **fisheries resources** or other **fisheries resources** to the detriment of the **fisheries resources** or other **fisheries resources**.

Entity see the schedule of the *Fisheries Act 1994*.

Note: **Entity** includes an **entity** established under the law of the Commonwealth or another state.

Fish see section 5 of the *Fisheries Act 1994*.

Note: **Fish**:

1. means an animal (whether living or dead) of a species that throughout its life cycle usually lives:
 - a. in water (whether freshwater or saltwater); or
 - b. in or on **foreshores**; or
 - c. in or on **land** under water
2. includes:
 - a. prawns, crayfish, rock lobsters, crabs and other crustaceans
 - b. scallops, oysters, pearl oysters and other molluscs
 - c. sponges, annelid worms, bêche-de-mer and other holothurians
 - d. trochus and green snails
3. does not include:
 - a. crocodiles, or
 - b. protected animals under the *Nature Conservation Act 1992*; or
 - c. pests under the *Pest Management Act 2001*; or
 - d. animals prescribed under a regulation not to be **fish**
4. fish also includes:
 - a. the spat, spawn and eggs of **fish**
 - b. any part of **fish** or spat, spawn or eggs of **fish**
 - c. treated **fish**, including treated spat, spawn and eggs of **fish**
 - d. coral, coral limestone, shell grit or star sand
 - e. freshwater or saltwater products declared under a regulation to be **fish**.

Fish habitat see the *Fisheries Act 1994*.

Note: **Fish habitat** includes **land**, waters and plants associated with the life cycle of **fish**, and includes **land** and waters not presently occupied by **fisheries resources**.

Fisheries resources see the *Fisheries Act 1994*.

Note: **Fisheries resources** includes **fish** and **marine plants**.

Fishery see section 7 of the *Fisheries Act 1994*.

Note: **Fishery** means activity by way of **fishing**, for example, activities specified by reference to all or any of the following:

1. a species of **fish**
2. a type of **fish** by reference to sex, size or age or another characteristic

3. an area
4. a way of **fishing**
5. a type of boat
6. a class of person
7. the purpose of an activity
8. the effect of the activity on a **fish habitat**, whether or not the activity involves **fishing**
9. anything else prescribed under a regulation.

Fishing see the *Fisheries Act 1994*.

Note: **Fishing** includes:

1. searching for, or taking, **fish**
2. attempting to search for, or take, **fish**
3. engaging in other activities that can reasonably be expected to result in the locating, or taking, of **fish**
4. landing **fish** (from a boat or in another way), bringing **fish** ashore or transshipping **fish**.

Foreshore see the *Fisheries Act 1994*.

Note: **Foreshore** means parts of the banks, beds, reefs, shoals, shore and other **land** between high water and low water.

Land includes **foreshores** and tidal and non-tidal land.

Legally secured offset area see the *Environmental Offsets Act 2014*.

Note: An area of **land** is a **legally secured offset area** if:

1. the area is:
 - a. an environmental **offset** protection area; or
 - b. an area declared as an area of high nature conservation value under section 19F of the *Vegetation Management Act 1999*; or
 - c. another area prescribed under a regulation; and
2. under the *Environmental Offsets Act 2014* or another Act, the area is subject to a delivery or management plan or agreement (however described in this Act or the other Act) to achieve a conservation outcome for a **prescribed environmental matter**.

Local provenance is within 100km of the site.

Management A area see the Fisheries (General) Regulation 2019.

Note: A **management A area** means an area within a **declared fish habitat area** identified by the words 'management A' on the **fish habitat** area plan mentioned in schedule 3 for the **declared fish habitat area**.

Management B area see the Fisheries (General) Regulation 2019.

Note: A **management B area** means an area within a **declared fish habitat area** identified by the words 'management B' on the **fish habitat** area plan mentioned in schedule 3 for the **declared fish habitat area**.

Marina see Marine Resource Management: Management of Declared Fish Habitat Areas Operational Policy, Department of National Parks, Sport and Racing, 2015.

Note: **Marina** means an area of tidal water primarily used for storage of multiple vessels secured to fixed or floating platforms that can be used to access the vessels. The **marina** may also include uses such as slipways, boat ramps, and fuel wharves.

Marine plant see section 8 of the *Fisheries Act 1994*.

Note: **Marine plant** includes the following:

1. a plant (a tidal plant) that usually grows on, or adjacent to, **tidal land**, whether it is living, dead, standing or fallen
2. material of a tidal plant, or other plant material on **tidal land**
3. a plant, or material of a plant, prescribed under a regulation or management plan to be a **marine plant**.

A **marine plant** does not include a plant that is a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*.

Matters of state environmental significance see the Environmental Offsets Regulation 2014.

Note: **Matters of state environmental significance** are **prescribed environmental matters** under the Environmental Offsets Regulation 2014 that require an **offset** when a prescribed activity will have a **significant residual impact** on the matter. A **matter of state environmental significance** is any of the following matters:

1. regional ecosystems under the *Vegetation Management Act 1999* that:
 - a. are endangered regional ecosystems
 - b. are of concern regional ecosystems
 - c. intersect with a wetland shown on the vegetation management wetlands map
 - d. contain areas of essential habitat shown on the essential habitat map for an animal that is endangered wildlife or vulnerable wildlife or a plant that is endangered wildlife or vulnerable wildlife
 - e. are located within the defined distances stated in the Environmental Offsets Policy 2014 from the defining banks of a relevant watercourse or drainage feature as shown on the vegetation management watercourse and drainage feature map; or
 - f. are areas of **land** determined to be required for ecosystem functioning ('connectivity areas')
2. wetlands in a wetland protection area or wetlands of high ecological significance shown on the map of Queensland Wetland Environmental Values under the Environmental Protection (Water and Wetland Biodiversity) Policy 2019
3. wetlands and watercourses in high ecological value waters as defined in schedule 2 of the Environmental Protection (Water and Wetland Biodiversity) Policy 2019
4. designated precincts in strategic environmental areas under the Regional Planning Interests Regulation 2014

5. threatened wildlife (plants and animals) under the *Nature Conservation Act 1992* and special least concern animals under the Nature Conservation (Wildlife) Regulation 2006
6. protected areas under the *Nature Conservation Act 1992*, excluding coordinated conservation areas
7. highly protected zones of state marine parks under the *Marine Parks Act 2004*
8. **declared fish habitat areas** under the *Fisheries Act 1994*
9. **waterways** that provide for **fish** passage under the *Fisheries Act 1994* if the construction, installation or modification of **waterway** barrier works carried under an authority will limit the passage of **fish** along the **waterway**
10. **marine plants** under the *Fisheries Act 1994*; or
11. **legally secured offset areas**.

Offset means environmental offset under the *Environmental Offsets Act 2014*.

Note: Environmental **offset** means an activity undertaken to counterbalance a **significant residual impact** of a prescribed activity on a **prescribed environmental matter**, delivered in accordance with the Environmental offsets framework. The **prescribed environmental matters** assessed under the State Development Assessment Provisions are **matters of state environmental significance**.

Prescribed development purposes see the Fisheries (General) Regulation 2019.

Note: A **prescribed development purpose** for a **declared fish habitat area**, means any of the following in, or directly affecting, the area:

1. restoring the **fish habitat** or natural processes (for example: reinstating tidal profiles for allowing restoration of **marine plant** communities, restoring tidal flows and inundation patterns)
2. managing **fisheries resources** or **fish habitat** (for example: constructing a boardwalk for public access within the **declared fish habitat area** for preventing uncontrolled disturbance of the habitat)
3. researching, including monitoring, or educating
4. ensuring public health or safety
5. providing public infrastructure to facilitate **fishing** (for example: a boat ramp or jetty for **public use**)
6. providing subterranean public infrastructure if the surface of the area can be restored, after the completion of the relevant works or activity, to its condition before the performance of the works or activity
7. constructing a temporary structure
8. maintaining a structure that was constructed before the area was declared to be a **fish habitat** area under the Act
9. maintaining a structure, other than a structure mentioned in 8 above, that has been lawfully constructed
10. for a part of the area that is a **management B area**:
 - a. constructing a permanent structure in the area; or
 - b. depositing material for beach replenishment in the area for the purpose of erosion control.

Prescribed environmental matters see the *Environmental Offsets Act 2014*.

Note: A **prescribed environmental matter** is any species, ecosystem or other similar matter protected under Queensland legislation for which an **offset** may be provided. A **prescribed environmental matter** may be a matter of national, state or local environmental significance, however, assessment criteria in the SDAP only relate to **matters of state environmental significance**. Each of the **prescribed environmental matters** are listed under the Environmental Offsets Regulation 2014.

Public sector entity see the *Planning Act 2016*.

Note: A **public sector entity** means:

1. a department or part of a department; or
2. other than in chapter 4 (of the *Planning Act 2016*) – a distributor-retailer; or
3. an agency, authority, commission, committee, corporation (including a government owned corporation), instrumentality, office, or other **entity**, established under an Act for a public or state purpose (for example: a local government, a government owned corporation or a rail government **entity** under the *Transport Infrastructure Act 1994*).

Public use means available for free use by any member of the public without prior permission.

Regularisation means the process of making a shoreline more consistent in alignment.

Resource allocation authority means a **resource allocation authority** issued, and in force, under part 5, division 3, subdivision 2A of the *Fisheries Act 1994*.

Significant residual impact see the *Environmental Offsets Act 2014*.

Note: **Significant residual impact** is an impact, whether direct or indirect, of a prescribed activity on all or part of a **prescribed environmental matter** that:

1. remains, or will or is likely to remain, (whether temporarily or permanently) despite on-site mitigation measures for the prescribed activity
2. is, or will, or is likely to be, significant.

Guidance for determining if a prescribed activity will have a **significant residual impact** on a **matter of state environmental significance** is provided in the Significant Residual Impact Guideline, Department of State Development, Infrastructure and Planning, 2014.

Tidal land see the *Fisheries Act 1994*.

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

Waterway see the *Fisheries Act 1994*.

Note: **Waterway** includes a river, creek, stream, watercourse or inlet of the sea. For further guidance see the Maintaining Fish Passage in Queensland: What is a waterway? factsheet, Department of Agriculture, Fisheries and Forestry, 2014.