

2020/21 Surveillance Program for Noxious Fish under the *Biosecurity Act 2014*

Biosecurity Queensland

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1 Biosecurity program

1.1 Program name

The surveillance program (biosecurity program) for Noxious Fish that are restricted matter or prohibited matter will be known as the Surveillance Program for Noxious Fish (the Program).

The biosecurity matter to which the Program relates are the Noxious Fish listed as restricted matter in Schedule 2 Part 1 of the *Biosecurity Act 2014*, Noxious Fish listed as prohibited matter in Schedule 1 Part 6 of the *Biosecurity Act 2014* and non-native invasive ornamental fish listed in Schedule 5 of the Biosecurity Regulation 2016.

The Program also relates to other aquatic biosecurity matter, which are any potentially invasive or high-risk vertebrate and invertebrate species (in addition to fish) that are in circulation in the Australian ornamental aquarium trade. These species may be translocated from aquaria into Queensland's natural waterways, resulting in significant impacts to industry and environment.

2 Requirement for a surveillance program

2.1 Purpose and rationale

The *Biosecurity Act 2014* (the Act) provides for the establishment of surveillance programs. Surveillance programs are directed at any of the following—

- (a) monitoring compliance with the Act in relation to a particular matter to which the Act applies;
- (b) confirming the presence, or finding out the extent of the presence, in the State or the parts of the State to which the program applies, of the biosecurity matter to which the program relates;
- (c) confirming the absence, in the State or the parts of the State to which the program applies, of the biosecurity matter to which the program relates;
- (d) monitoring the effects of measures taken in response to a biosecurity risk;
- (e) monitoring compliance with requirements about prohibited matter or restricted matter;
- (f) monitoring levels of biosecurity matter or levels of biosecurity matter in a carrier.

The objectives of the Program are to:

- (a) confirm the presence, and find out the extent of the presence in Queensland, of the prohibited matter or restricted matter to which the program relates;
- (b) confirm the absence in Queensland, of the prohibited matter to which the program relates;
- (c) monitor the effects of measures taken in response to a biosecurity risk posed by Noxious Fish.

2.2 Measures that are required to achieve the purpose

The key activities undertaken by the Program include but are not limited to:

- Surveillance activities to check for the absence, presence, or find out the extent of the presence in Queensland, of the prohibited matter, restricted matter and non-native invasive ornamental fish to

which the program relates. This surveillance will mainly be conducted by entry of ground teams onto a place to conduct visual inspections, establish fixed underwater camera or monitoring devices and use traps and nets. Boat or back-pack mounted electro-fishers may be utilised. Water or fish samples may be taken for DNA analysis to confirm presence and species identification. Aerial survey by visual, photographic or electronic means using remote controlled unmanned aerial vehicles (UAV) or aircraft may be undertaken.

- Monitor the effects of measures taken in response to a biosecurity risk posed by Noxious Fish, including water sampling, baiting, netting, electrofishing, and use of piscicides.

2.3 Powers of authorised officers

Entry of place

The Act provides that authorised officers appointed under the Act may, at reasonable times, enter a place situated in an area to which a biosecurity program applies, to take any action authorised by the biosecurity program¹. These activities must be done in a timely and efficient manner to ensure that the measures are as effective as possible. The Program will authorise entry into places to allow these measures to be undertaken.

In accordance with the Act a reasonable attempt will be made to locate an occupier² and obtain the occupier's consent to the entry prior to an authorised officer entering a place to undertake activities under the Program. Nevertheless, an authorised officer may enter the place if³—

- (a) The authorised officer is unable to locate an occupier after making a reasonable attempt to do so; or
- (b) the occupier refuses to consent to the entry.

If after entering a place an authorised officer finds an occupier present or the occupier refuses to consent to the entry—an authorised officer will make reasonable attempts to produce an identity card for inspection and inform the occupier of the reason for entering and the authorisation under the Act to enter without the permission of the occupier. An authorised officer under the Surveillance Program for Noxious Fish must make a reasonable attempt to inform the occupier of any steps taken, or to be taken, and if steps have been taken or are to be taken, that it is an offence to do anything that interferes with a step taken or to be taken.

An authorised officer must leave a notice in a conspicuous position and in a reasonably secure way. This notice must state the date and time of entry and information addressing the reason for entry, authorisation to enter a place and the steps undertaken by the authorised officer after entry.

Power to carry out aerial controls measures

The power to carry out aerial control measures is authorised by a biosecurity program under the Act⁴. This means that an authorised officer may carry out, or direct another person to carry out aerial surveillance measures for Noxious Fish in relation to a place to which the Program relates.

¹ See section 261 (Power to enter a place under biosecurity program) of the Act.

² The Act defines an **occupier**, of a place, generally to include the person who apparently occupies the place (or, if more than 1 person apparently occupies the place, any of the persons); any person at the place who is apparently acting with the authority of a person who apparently occupies the place; or if no-one apparently occupies the place, any person who is an owner of the place.

³ See section 270 (Entry of place under sections 261 and 262) of the Act.

⁴ See section 294 (Power to carry out aerial control measures under biosecurity program) of the Act. Section 294(6) of the Act defines **aerial control measure**, for biosecurity matter, to mean an activity, done from the air by an airborne machine or a person in an aircraft, to achieve a purpose of a biosecurity program and includes the following—

- surveying and monitoring the biosecurity matter;
- distributing an agricultural chemical to control the biosecurity matter.

Obligations

A person must not interfere with cameras, traps, nets or water sampling devices placed to detect Noxious Fish and other biosecurity matter to which the program relates.

General powers of authorised officers

Nothing in the Program or its associated Authorisation limits the powers of authorised officers under Chapter 10 of the Act.

2.4 Consultation

Consultation was undertaken with each local government and invasive animal board in Queensland with responsibility for ensuring the management of invasive biosecurity matter in its area.

3 Authorisation of a surveillance program in the State of Queensland

I, Dr Elizabeth Woods, the chief executive of the Department of Agriculture and Fisheries, acting pursuant to section 235 of the *Biosecurity Act 2014*, authorise a Surveillance Program for Noxious Fish in all of the State of Queensland on the basis that I am satisfied that:

- Noxious fish pose a significant biosecurity risk to biosecurity considerations in the State of Queensland;
- Surveillance activities are required to determine the presence or absence of Noxious Fish in the State of Queensland;
- Surveillance activities are required to determine the extent of the presence of Noxious Fish in the State of Queensland;
- Surveillance activities are required to monitor the effects of measures taken previously in response to the biosecurity risk posed by Noxious Fish.

Dr Elizabeth Woods
Director-General
Department of Agriculture and Fisheries

Authorised on 19 June 2020

3.1 Biosecurity matter

The biosecurity matter to which the Program relates are the Noxious Fish listed as restricted matter in Schedule 2 Part 1 of the *Biosecurity Act 2014* and noxious fish listed as prohibited matter in Schedule 1 Part 6 of the *Biosecurity Act 2014* and non-native invasive ornamental fish listed in Schedule 5 of the Biosecurity Regulation 2016.

The Program also relates to other aquatic biosecurity matter, which are any potentially invasive or high-risk vertebrate and invertebrate species (in addition to fish) that are in circulation in the Australian ornamental aquarium trade. These species may be translocated from aquaria into Queensland's natural waterways, resulting in significant impacts to industry and environment.

3.2 Purpose of the Program

The purpose of the Program is to:

- (a) determine the presence or absence in Queensland, of the Noxious Fish and other aquatic biosecurity matter to which the program relates;
- (b) determine the extent of the presence in Queensland, of the Noxious Fish and other aquatic biosecurity matter to which the program relates;
- (c) monitor the effects of measures taken previously in response to a biosecurity risk posed by Noxious Fish and other aquatic biosecurity matter to which the program relates.

3.3 Area affected by the Program

The Program will apply to the whole of the State of Queensland.

3.4 Powers of authorised officers

An authorised officer of the Program appointed under the *Biosecurity Act 2014*, may enter a place—other than a residence⁵—without a warrant and without the occupier’s consent within the State of Queensland under the Program⁶. An authorised officer appointed under the *Biosecurity Act 2014* will also have the power to enter a place under the Program.⁷

An authorised officer can exercise the powers of an authorised officer under the Act in relation to the Program, if the authorised officer is appointed by the chief executive⁸. An authorised officer has general powers after entering a place to do any of the following⁹:

General powers in the Act	Measures an authorised officer may take under the Program
Search any part of the place	<i>Searching a place to check for the presence or absence of Noxious Fish.</i>
Inspect ¹⁰ , examine ¹¹ or film ¹² any part of the place or anything at the place	<i>Inspect, examine, photograph and film to assist with tracing of carriers to and from a place.</i>
Take for examination a thing, or a sample of or from a thing, at the place	<i>Establish fixed camera sites and traps or nets or water sampling devices.</i>
Place an identifying mark in or on anything at the place	<i>Take samples for the purposes of diagnostic analysis, to ascertain the presence or absence of Noxious Fish.</i>
Place a sign or notice at the place	<i>Producing a written and/or electronic note(s) to support the Program activities.</i>
Produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing	<i>Taking GPS coordinates to ensure accuracy of location details of the Noxious Fish.</i>
Take to, into or onto the place and use any person, detection animal, equipment and materials the authorised officer reasonably requires for exercising the authorised officer’s powers under this division	
Destroy biosecurity matter or a carrier if the authorised officer believes on reasonable grounds the biosecurity matter or carrier presents a significant biosecurity risk; and the owner of the biosecurity matter or carrier consents to its destruction	
Remain at the place for the time necessary to achieve the purpose of the entry	
The authorised officer may take a necessary step to allow the exercise of a general power	
If the authorised officer takes a document from the place to copy it, the authorised officer must copy and return the document to the place as soon as practicable	

⁵ The Act defines a **residence** to mean a premises or a part of a premises that is a residence with the meaning of section 259(2) and 259(3).

⁶ See section 259 (General powers to enter places) of the Act.

⁷ See section 261 (Power to enter a place under biosecurity program) of the Act.

⁸ See section 255 (3) (Powers of particular authorised officers limited) of the Act.

⁹ See section 296 (General powers) of the Act.

¹⁰ Section 296(5) defines **inspect**, a thing, to include open the thing and examine its contents.

¹¹ Section 296(5) defines **examine** to include analyse, test, account, measure, weigh, grade, gauge and identify.

¹² Section 296(5) defines **film** to include photograph, videotape and record an image in another way.

If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.	
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An authorised officer may make a requirement (a **help requirement**) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power¹³.

An authorised officer may carry out, or direct another person to carry out, aerial surveillance measures of Noxious Fish in relation to a place. Under the Program these measures include surveillance by visual, photographic or electronic observations of the place. This surveillance may be undertaken by manned aeroplanes or helicopters or un-manned aerial vehicles (UAVs).

3.5 Obligations imposed on a person under the Program

A person must not interfere with cameras, traps or water sampling devices.

3.6 Commencement and duration of the Program

The Program will begin on 7 July 2020 and will continue until 30 June 2021. The duration of the program is considered to be reasonably necessary to achieve the Program's purpose.

3.7 Consultation with relevant parties

As required by the Act¹⁴, I have consulted, prior to the authorisation of the Program, with all local governments in Queensland and the Darling Downs Moreton Rabbit Board (an invasive animal board under the Act).

3.8 Notification of relevant parties of requirements

As required by the Act¹⁵, I will give public notice of the Program 14 days before the Program starts by:

- giving the notice, by way of letter, to each government department or government owned corporation responsible for land in the area to which the Program relates; and
- publishing the notice on the Department's website.

A copy of the Program (including its Authorisation) is available for inspection at the Department of Agriculture and Fisheries head office at 41 George Street Brisbane and regional offices. A copy of the Program is also available to view and print at no cost on the Department of Agriculture and Fisheries' website at www.daf.qld.gov.au. A copy of the Program Authorisation will be provided on request by contacting the Department of Agriculture and Fisheries Customer Service Centre on 13 25 23.

¹³ See section 297 (Power to require reasonable help) of the Act.

¹⁴ See section 239 (Consultation about proposed biosecurity program) of the Act.

¹⁵ See section 240 (Notice of proposed biosecurity program) of the Act.