



Policy for the Allocation of Marine Aquaculture Authorities



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The *Policy for the Allocation of Marine Aquaculture Authorities* has been prepared by Fisheries Queensland, a service of the Department of Employment, Economic Development and Innovation (DEEDI), in collaboration with the former Department of Tourism, Regional Development and Industry. The project is overseen by an Inter-Agency Working Group and the Aquaculture Inter-Departmental Committee.

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1 Title

The document may be cited as: *Policy for the Allocation of Marine Aquaculture Authorities*.

2 Objectives

The objective of this policy is to assist in achieving the main purpose of the *Fisheries Act 1994* (described in Appendix 1) by establishing a flexible and transparent mechanism for the allocation of marine aquaculture authorities. This will satisfy community expectations that aquaculture areas are being utilised responsibly to ensure they are ecologically sustainable, and that production is maximised while providing an attractive and secure investment environment.

This policy relates only to the preferred allocation of a Resource Allocation Authority (RAA) prior to assessment of the RAA application. Assessment of the RAA is undertaken through a separate process, and is not within the scope of this policy.

3 Background introduction

The Queensland Government has identified aquaculture as a priority industry for the State and is committed to the ecologically sustainable development of the aquaculture industry. A range of initiatives to facilitate the ecologically sustainable development of the industry has been progressed through the Aquaculture Inter-Departmental Committee (IDC).

Fisheries Queensland, a service of the Department of Employment, Economic Development and Innovation (DEEDI), in collaboration with the former Department of Tourism, Regional Development and Industry, is currently developing a statewide planning framework for aquaculture development in Queensland. This will include the development of regional aquaculture plans, which identify key areas with potential for ecologically sustainable aquaculture development. An important component of the regional planning process is to have a flexible allocation mechanism for marine aquaculture authorities that is efficient and transparent.

The allocation of scarce public resources is not restricted to the aquaculture industry. Other examples include the allocation of commercial fisheries resources, the allocation of unallocated state land for grazing, the allocation of resources for the mining sector, and the allocation of water for human consumptive uses, among others.

There are a number of alternative mechanisms available for allocation of public resources. These can be classified into two general categories: non-competitive allocation and competitive allocation. Non-competitive allocation systems might involve assessing development applications on a 'first come, first served' basis while competitive allocation can include the use of administrative arrangements (where applicants compete against allocation criteria) and/or auctions (where applicants compete against each other).

The efficiency of marine resource use and aquaculture production can be influenced by how marine aquaculture authorities are allocated.

Most jurisdictions in Australia provide for a range of competitive and non-competitive approaches to allocate marine aquaculture authorities. Generally, most marine aquaculture authorities are granted either on application (non-competitive), or through the use of allocation criteria (competitive). Some jurisdictions limit the release of marine aquaculture authorities in order to intensify competition.

Aquaculture applications in Queensland were previously assessed through a non-competitive process with no pre-determined sites, with no alternative allocation mechanisms. This situation is not in the best interest of industry development and the growth of marine aquaculture because it does not ensure the best use of the limited number of suitable sites.

The IDC identified the lack of a clear and transparent allocation policy as an impediment to the orderly and ecologically sustainable development of the marine aquaculture industry in Queensland. This was reinforced by the review of regulatory arrangements for aquaculture undertaken by the Productivity Commission¹. The National Best Practice Framework of Regulatory Arrangements for Aquaculture (DAFF, 2005) recommends a transparent and equitable mechanism for the allocation of resources for aquaculture.

3.1 Legislative framework

New applications for aquaculture on marine and tidal land are authorised by a development approval permit (DA) issued under the *Sustainable Planning Act 2009* (SP Act), formerly the *Integrated Planning Act 1997*, and an RAA issued under the *Fisheries Act 1994*². All current aquaculture licences, as of 1 March 2005, were transitioned to DAs (which permit the operation of the aquaculture activity) and RAAs (which authorise the use of state waters for the purpose of marine aquaculture).

An RAA is taken to be the consent of the state to utilise fisheries resources; therefore, where there is no RAA, a DA is of no use³.

4 Effective date

The policy is effective from the date it is approved and will be revised in three years from the date of approval, or as necessary.

5 Application of the policy

This policy applies to all RAA applications to undertake marine aquaculture on tidal lands or marine waters in Queensland. This includes applications for:

- aquaculture areas within the boundaries of a regional aquaculture plan, which are identified as aquaculture areas under the plan
- aquaculture areas within the boundaries of a regional aquaculture plan, but not identified as aquaculture areas under the plan
- aquaculture areas outside of the boundaries of a regional aquaculture plan
- existing aquaculture areas which have been abandoned, cancelled or surrendered
- aquaculture areas within the boundaries of a regional aquaculture plan where planning has officially commenced but is not yet complete.

This policy relates only to the preferred allocation of an RAA. Assessment of the RAA will be undertaken by DEEDI through a separate process and is not within the scope of this policy. This policy is to be read and applied in conjunction with the *Fisheries Act 1994*, and all other relevant national and state legislation and policies.

5.1 Departure from the policy

Decision-makers, who are delegates of the chief executive, are required to apply this policy in their decision-making.

Where a proposal can demonstrate an acceptably low level of risk, the chief executive may consider a departure from this policy position. Any approved departure will be documented as an approved variation in this policy when next updated.

6 Relevant legislation

Fisheries Act 1994, Fisheries Regulation 2008 and the *Sustainable Planning Act 2009* (formerly the *Integrated Planning Act 1997*).

¹ *Assessing environmental regulatory arrangements for aquaculture*, Productivity Commission Research Paper 2004.

² Appendix 1 — *Fisheries Act 1994*, Section 76A, *Sustainable Planning Act 2009*, Schedule 8, Part 1, Table 2, Item 8.

³ Appendix 1 — *Fisheries Act 1994*, Section 76B, Fisheries Regulation 1995, Part 7, Division 5, Subdivision 1, Section 57.

7 Consultation

A summary of the options available for the allocation of marine aquaculture authorities was included in the *Marine Aquaculture Policy Green Paper*⁴ released for public comment in January 2007. Comments were sought on the options available for allocation and the method of allocation that would be most appropriate for new marine aquaculture authorities in different circumstances. Submissions responding to the green paper proposals for an allocation policy for marine aquaculture authorities assisted in the development of this policy.

A *Draft Policy for the Allocation of Marine Aquaculture Authorities* was released for public consultation from July to October 2008. The results of consultation assisted in refining the final policy.

8 Policy provisions

A combination of non-competitive and competitive methods will be used to allocate RAAs in Queensland, depending on the location and circumstances of each application. This provides a fair and flexible mechanism for the allocation of authorities. Details of the allocation mechanisms for RAAs are provided below (see also Appendix 2).

8.1 Competitive allocation

RAAs are to be allocated through a competitive allocation process using administrative arrangements in the following circumstances:

- authorities for new aquaculture areas identified as aquaculture areas under regional aquaculture plans
- authorities for existing aquaculture areas which have been abandoned, surrendered or cancelled.

Competitive allocation of RAAs is suitable in the above circumstances as it is expected that these aquaculture areas will generate a higher level of interest for the resource. The increase in interest will be generated by the higher level of certainty that regional plans provide to potential investors and the promotion of pre-determined sites. As with existing aquaculture areas that have been abandoned, surrendered or cancelled, there will be no requirement for investors to identify sites or undertake detailed site assessments for aquaculture areas identified within regional plans.

Competitive allocation will ensure the best use of a limited resource by allocating sites to the best competitors. This is especially appropriate for pre-determined sites since these sites represent a significant investment by the Queensland Government.

Administrative processes

The use of administrative approaches will involve an Expression of Interest process that calls for RAA applications for designated aquaculture sites from interested parties.

An assessment of applications against selection criteria by an allocation panel will follow. The panel will make recommendations to the chief executive regarding applications. The assessment of applications against selection criteria will enable an evaluation to be made relative to other applications. Selection criteria will be established to evaluate the degree of business viability and environmental best practice.

This process can ensure a good fit between the business capacity and resourcing of the applicants and their environmental design and management, and the development potential of the sites.

Where the Expression of Interest process generates only a single application for a given site, the application will be assessed by the allocation panel against the selection criteria. If the panel consider that the application adequately addresses the minimum mandatory criteria, the application will go through to the RAA assessment stage and will be assessed on its merits.

⁴ Refer to the Department of Employment, Economic Development and Innovation: webpage <http://www.industry.qld.gov.au/dsdweb/v4/apps/web/content.cfm?id=7042>

Expression of Interest

The Queensland Government's intention to allocate RAAs will be publicly advertised in state and national newspapers. The notice should be printed in the Saturday editions of the papers and include a summary of the sites, the closing date for applications and a contact point for which an information pack can be obtained.

An Expression of Interest document will contain general information on the area(s) that are available, planning and management controls that will apply for each area, allocation criteria that will be used to allocate the RAAs, and guidelines for addressing each of the allocation criteria. Interested parties will be required to submit an application for an RAA, including details of the species, culture methods and techniques, site plans, an operations management plan, an environmental management strategy, and a business plan for the proposed aquaculture operation. In addition, applications will need to include relevant information that addresses the allocation criteria which is evaluated by an allocation panel.

Applications for RAAs for areas identified in an aquaculture regional plan will only be accepted in response to a call for Expression of Interest. Expressions of Interest will be released at periodic intervals (e.g. every 12 months). The rationale for this is to ensure a greater level of competition than would result from applicants responding to selection criteria only on a first come, first served basis.

Existing aquaculture areas that have been abandoned, surrendered or cancelled will be re-allocated unless re-allocation would be contrary to an aquaculture management plan (for example the *Oyster Industry Management Plan for Moreton Bay Marine Park*⁵).

⁵ Details of the *Oyster Industry Management Plan for Moreton Bay Marine Park* can be found at: http://www.dpi.qld.gov.au/28_14361.htm

Allocation panel

An allocation panel will be established to review applications for RAAs, including the allocation criteria, and make recommendations to the chief executive on the preferred allocation of an aquaculture area. The role of the panel is to provide a transparent and accountable allocation process of RAAs. The panel will not be responsible for the assessment of applications for RAAs – this will be undertaken separately by DEEDI.

The allocation panel will consist of five members and include:

- the manager, Aquaculture Policy and Industry Development, DEEDI (Chair)
- an officer, Marine Parks, Department of Environment and Resource Management (DERM)
- an independent person with knowledge and experience in the aquaculture industry
- an independent person with experience in business and commerce
- an independent person with knowledge and experience in environmental management.

The allocation panel will evaluate applications, including the allocation criteria, received through the Expression of Interest. Where there is more than one application for a specific site, applications will be evaluated on the merit of their application relative to all other applications received for the site. Evaluations will consider how well the applications meet the objectives of the *Fisheries Act 1994* and address the principles of ecologically sustainable development (see Appendix 1).

Allocation criteria

The following allocation criteria will be used to evaluate applications:

Mandatory

- An RAA application must be properly made.
- An applicant is able to lodge a bank guarantee to allow for site restoration.

- The proposed type of aquaculture complies with the relevant regional marine aquaculture plan and the intent of the regional marine aquaculture plan (where applicable).

Other

- The applicant's business plan for the aquaculture operation (applicant to supply a detailed business plan). Preference will be given to proposals that are best able to reduce and/or manage risk of financial failure.
- Environmental design and management strategy, including ability of the applicant to address environmental matters likely to affect the operation (applicant to supply an environmental management strategy). Preference will be given to proposals that are best able to reduce and/or manage environmental impacts (for example, one application may require a less extensive array of structures than another).

An example of voluntarily exceeding best practice would be collaborative research into understanding and mitigating environmental impacts from human activities, such as contributing to larger research programs in the region, or development of technology that assists data collection. DEEDI and DERM may be able to provide advice about current research needs and existing programs.

Following evaluation of applications, the allocation panel will make a recommendation to the chief executive on the preferred allocation of an authority for an aquaculture area.

Assessment and issue of RAAs

The chief executive is the decision-maker in regard to the assessment and issuing of RAAs⁶. DEEDI will undertake the assessment of RAA applications, taking into account any recommendations of the allocation panel. In addition to the recommendations of the allocation panel, for the purpose of assessing the application the chief executive must also consider the development in relation to:

- *Fisheries Act 1994*
- coastal management under the *Queensland Coastal Plan*
- protection of Queensland waters as required under the *Environmental Protection Act 1994*
- management of marine parks under the *Marine Parks Act 2004*⁷
- (where applicable) the implementation guidelines for the relevant regional marine aquaculture plan.

Applicants will be notified if their application for an RAA has been approved or not approved. Successful competitors will then be required to lodge a development approval application. Decisions relating to the issue of RAAs are subject to appeal to the Fisheries Tribunal.

RAAs for aquaculture areas that are not allocated during this process will be included in future Expression of Interest offers.

8.2 Non-competitive allocation

RAAs are to be allocated through a non-competitive process and assessed on individual merits in the following circumstances:

- authorities for new areas outside of the boundaries of a regional marine aquaculture plan
- authorities for new areas within the boundaries of a regional marine aquaculture plan that has been announced but not yet completed.

Non-competitive allocation is suitable for the above authorities because government investment in these sites is minimal. In addition, it is expected that the number of applications for authorities under these circumstances will be low. In these circumstances, a detailed site assessment will be required from the applicant. This process could entail significant time and investment on the part of the applicant. A risk assessment approach is adopted by decision-makers for the assessment of RAAs. Applicants may be refused an RAA if they are unable to demonstrate that the level of risk associated with their proposal is sufficiently low.

⁶ Appendix 1 – Fisheries Regulation 2008, Part 2, Division 1, Subdivision 1 Section 203.

⁷ Appendix 1 – *Fisheries Act 1994*, Section 60A.

Investors interested in applying for an RAA in an area where the development of a regional aquaculture plan has been announced will be encouraged to wait until the regional plan is finalised before applying. However, development of a regional plan can take a significant period of time and investors will not be delayed from making an application. It will be the responsibility of the investor to identify the site and undertake a detailed site assessment in these circumstances. It should be noted that in situations where regional planning is underway, the DEEDI will have access to considerable information about the area. Substantial justification will be needed should aquaculture be proposed in an area that the planning process considers inappropriate.

Non-competitive allocation will not reduce the current assessment requirements for aquaculture applications. Detailed applications for a DA and an RAA, including business plans, operations management plans, and aquaculture site management plans, are required for assessment of the applications.

Where a number of applications are received for the same area, applications will be placed in a queue system with the first application received being assessed first. If an application is received for the same area as a previously accepted application, the applicant will be advised and can either withdraw the application or secure a place in a queue to await the outcome of the decision. Later applications will be assessed only if earlier applications are refused. If an application is successful, the remaining applicants in the queue are to be notified and the queue cleared.

8.3 Applications for areas not identified as aquaculture areas under regional plans

This section applies to applications for areas within the boundaries of a regional aquaculture plan but not identified as aquaculture areas under the regional plan.

Regional aquaculture plans may be developed for relatively large regions to guide the development of sustainable aquaculture. The intent of regional plans is to identify a number of suitable sites for aquaculture, together with appropriate management controls, so as to provide increased certainty about where and how aquaculture will be developed within the boundaries of the regional plan.

Aquaculture areas under regional aquaculture plans are selected after a rigorous process of site selection and assessment, involving evaluation of constraints and opportunities across the entire subject region. Given these considerations, it is anticipated that approval would not be given for areas within the boundaries of a regional aquaculture plan but not identified as aquaculture areas under the regional plan.

Appendix 1 — Legislation *Fisheries Act 1994*

Three particular purposes of Act

1. The main purpose of this Act is to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to (a) apply and balance the principles of ecological sustainable development; and (b) promote ecological sustainable development.
2. In balancing the principles, each principle is to be given the relative emphasis appropriate in the circumstances.
3. In this section—ecologically sustainable development means using, conserving and enhancing the community's fisheries resources and fish habitats so that (a) the ecological processes on which life depends are maintained; and (b) the total quality of life, both now and in the future can be improved.

Precautionary principle means the principle that, if there is a threat of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason to postpone measures to prevent environment degradation, or possible environmental degradation, because of the threat.

Principles of ecologically sustainable development means the following principles—

- a. enhancing individual and community wellbeing through economic development that safeguards the wellbeing of future generations;
- b. providing fairness within and between generations;
- c. protecting biological diversity, ecological processes and life-support systems;
- d. in making decisions, effectively integrating fairness and short and long-term economic, environmental and social considerations;
- e. considering the global dimension of environmental impacts of actions and policies;

- f. considering the need to maintain and enhance competition, in an environmentally sound way;
- g. considering the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection;
- h. that decisions and actions should provide for broad community involvement on issues affecting them;
- i. the precautionary principle.

3A How particular purposes are to be primarily achieved

1. The main purpose of this Act is to be primarily achieved by—
 - a. giving the chief executive appropriate powers to perform the chief executive's functions under this Act; and
 - b. providing for the following—
 - (i) the management and protection of fish habitats;
 - (ii) the management of commercial, recreational and indigenous fishing;
 - (iii) the prevention, control and eradication of disease in fish;
 - (iv) the management of aquaculture.

6oA Matters chief executive must consider

In deciding an application for a resource allocation authority, the chief executive must have regard to the impact of the development mentioned in the authority on each of the following—

- a. coastal management under the *Coastal Protection and Management Act 1995*;
- b. the protection of Queensland waters as required under the *Environmental Protection Act 1994*;
- c. the management of marine parks under the *Marine Parks Act 2004*.

76A Application of sdiv 1

This subdivision applies to the following development—

- a. development mentioned in the Planning Act, schedule 8, part 1, table 1, item 2 or schedule 8, part 1, table 4, item 7, to the extent the development is carried out in Queensland waters or on land other than freehold land (***prescribed declared fish habitat area development***);
- b. development mentioned in the Planning Act, schedule 8, part 1, table 2, item 8, if it is carried out completely in Queensland waters or on unallocated tidal land (***prescribed aquaculture development***).

76B Requirement for resource allocation authority

A development application for a fisheries development approval must be supported by evidence that 1 of the following is in existence for the development—

- a. for prescribed declared fish habitat area development—a resource allocation authority for interfering with a declared fish habitat area;
- b. for prescribed aquaculture development—a resource allocation authority for interfering with fish habitat in Queensland waters or on unallocated tidal land.

Fisheries Regulation 2008:

203 Types of authorities

The types of authorities the chief executive may issue, other than a quota, are the following—

- a. resource allocation authorities;

Note—

Part 3 provides for matters relating to the issue of, and authorisation under, resource allocation authorities.

- a. (b) permits;
- b. (c) licences.

216 Authorisation under resource allocation authority

1. A resource allocation authority holder may do any of the following under the authority—
 - a. for an authority relating to prescribed declared fish habitat area development or development mentioned in the Planning Act, schedule 8, part 2, table 1, item 3(d) or table 4, item 3(d) or (e)—interfere with the declared fish habitat area mentioned in the authority;
 - b. for an authority relating to prescribed aquaculture development—interfere with the fish habitat in the Queensland waters or on the unallocated tidal land mentioned in the authority;
 - c. for an authority relating to development mentioned in the Planning Act, schedule 8, part 2, table 4, item 4(a)—collect dead marine wood for trade or commerce from the unallocated State land mentioned in the authority;
2. However, the holder may do an act mentioned in subsection (1) only if—
 - a. the holder does the act in relation to the development to which the authority relates; and
 - b. the development is carried out in a way that is authorised under the Planning Act.

Sustainable Planning Act 2009 (formerly the Integrated Planning Act 1997)

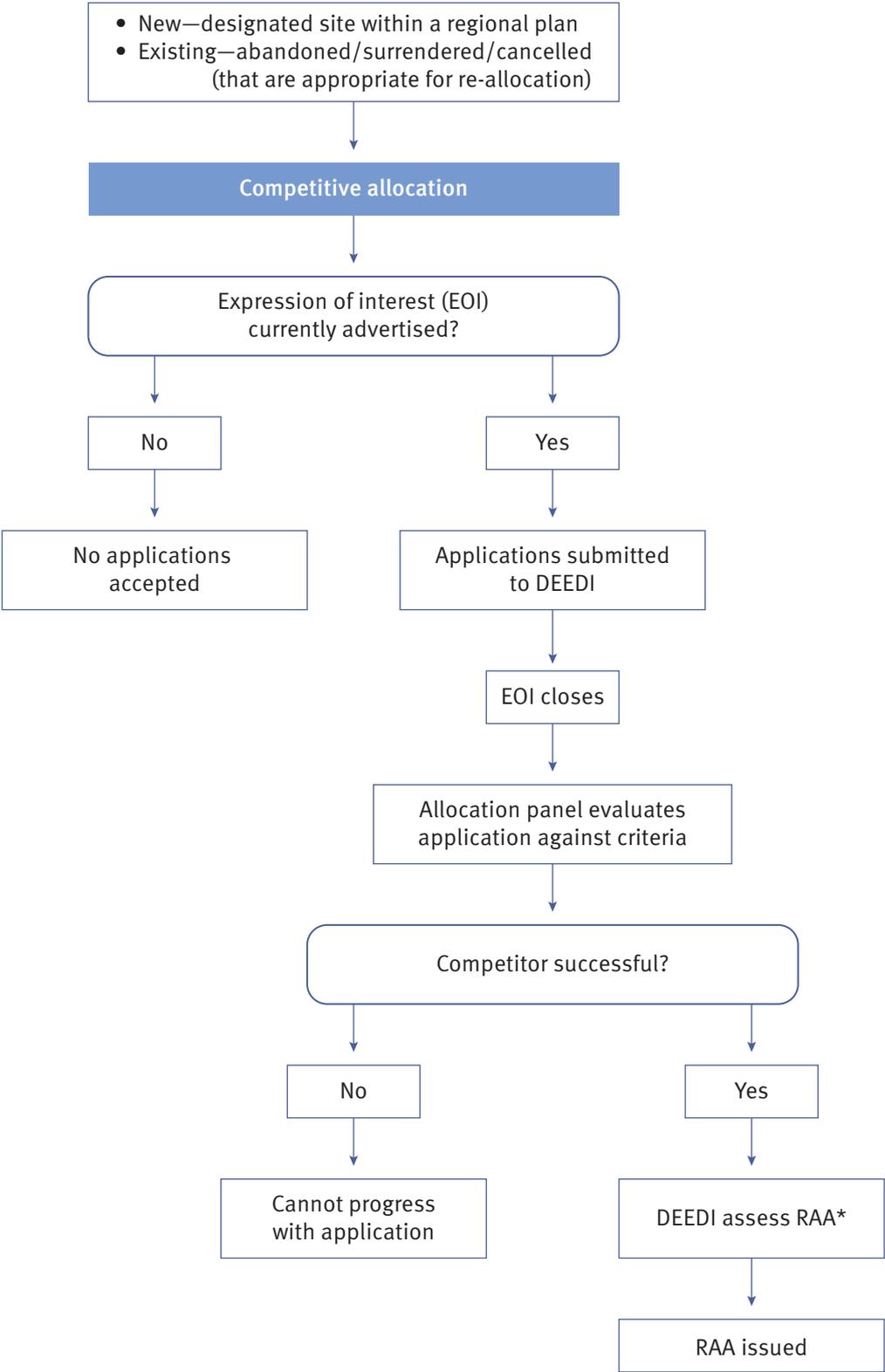
Schedule 8 Assessable development and self-assessable development

Part 1 Assessable development, Table 2 Material change of use of premises, Item 8

For aquaculture

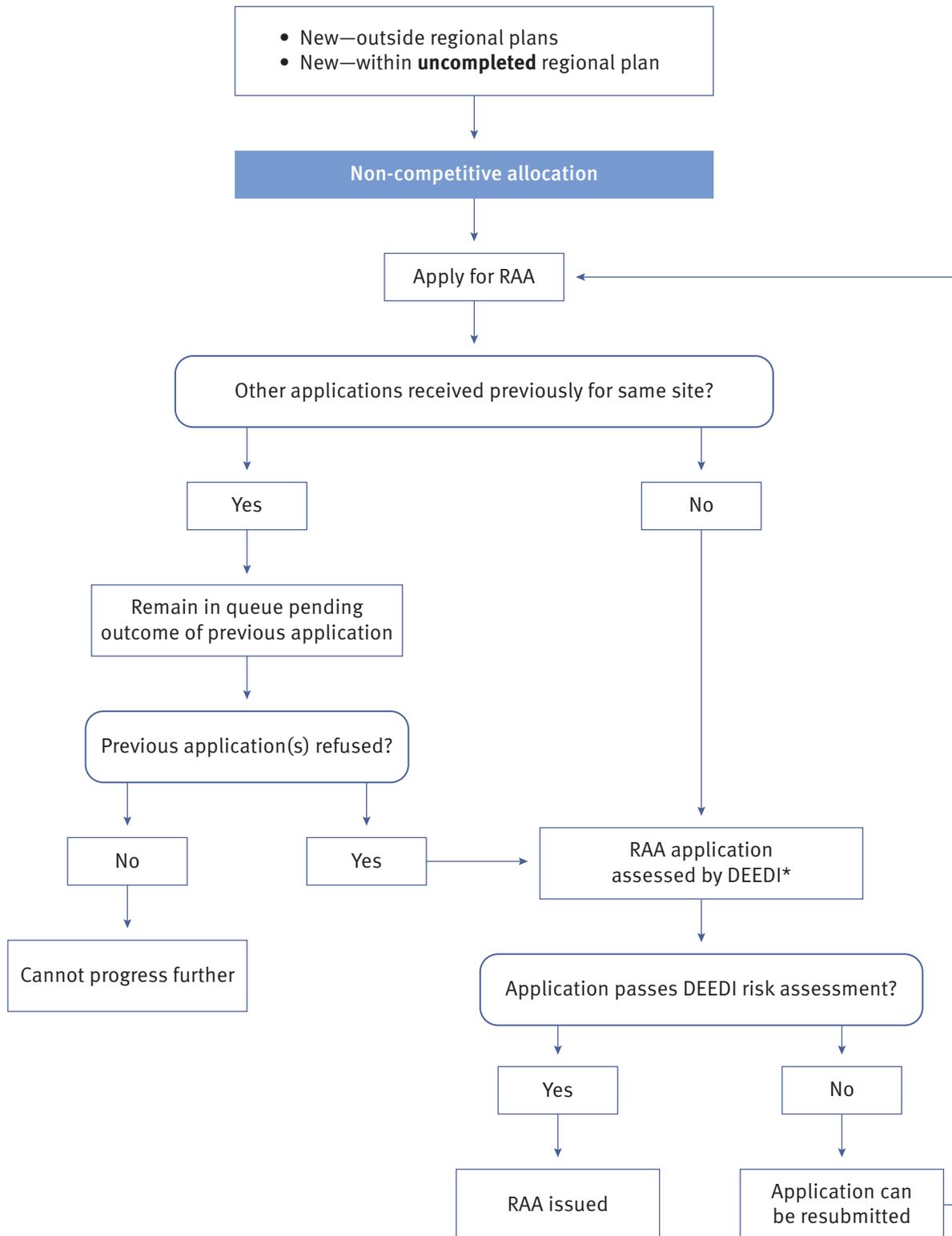
For assessing a material change of use against the *Fisheries Act 1994*, making a material change of use of premises for aquaculture if it is not self-assessable development.

Appendix 2 – Flow diagrams for the allocation of RAAs



* The assessment of the RAA is outside the scope of this policy.

Appendix 2 (cont)



* The assessment of the RAA is outside the scope of this policy.

