
Fisheries Ministerial Policy Guidelines

Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia

Issued Pursuant to Section 246
of the *Fish Resources Management Act 1994*
and Section 24 of the *Pearling Act 1990*

As amended December 1998

Ministerial Policy Guidelines No. 8



FISHERIES
WESTERN AUSTRALIA

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ASSESSMENT OF APPLICATIONS FOR AUTHORISATIONS FOR AQUACULTURE AND PEARLING IN COASTAL WATERS OF WESTERN AUSTRALIA

Issued Pursuant to Section 246 of the *Fish Resources Management Act 1994*
and Section 24 of the *Pearling Act 1990*.

1. INTRODUCTION

The Executive Director of Fisheries Western Australia (in this Guideline, 'Executive Director' to be read as 'Executive Director' or 'delegate of the Executive Director') performs many functions under the provisions of the *Fish Resources Management Act 1994* and the *Pearling Act 1990* ('the Acts'). These functions often include decisions on whether to grant an authorisation in a particular case. This decision may involve consideration of the factors of what constitutes a 'fit and proper person' to hold an authorisation and in the circumstances whether the grant of an authority is 'in the better interests of industry.' It is my function as Minister to provide policy guidelines as to which factors should be considered when dealing with such matters. The publication of this guideline will provide guidance to the Executive Director and will be indicative to and provide a level of certainty and transparency for the public and industry of the formal processes that are followed to arrive at a decision in these matters.

The purpose of guidelines then is to establish the principles on matters that I consider to be of importance which relate to particular topics.

Industry and the community have been consulted during the process of determining this guideline, with the intention that they have input into identifying the factors that may be considered by the Executive Director and are aware of the issues which are being directed to the Executive Director's decision making in relation to their interests. The Act establishes the principle that, subject to consultation with the fishing industry, special interest groups and members of the general public affected by the policy, it is the Minister who sets policy guidelines for the general regulation of fishing, pearling and aquaculture in Western Australia.

The groups consulted in the initial formulation of this guideline included relevant Government agencies, the Aquaculture Council of WA, Pearl Producers Association, Recreational Fishing Industry Advisory Committee and associated Regional Advisory Committees and the Conservation Council of WA. Public comments were also sought.

Matters in guidelines are not intended to limit in any way the statutory discretion exercised by the Executive Director in a particular case; the guidelines provide principles. The Executive Director will exercise discretion based on the merits of each individual case, and may take into account matters not set out in the guidelines. Furthermore, if the matters contained in the guidelines are inconsistent with a provision of either Act, the Acts prevail.

This guideline will continue to apply unless amended following a review by the Executive Director. The review report should include a list of decisions made under the guideline, the usefulness of the guideline for decision making and any recommendations for amendment or replacement of the guideline. In the case of this guideline, reviews should occur no more frequently than annually with at least one review to be undertaken no later than December 2005.

Guidelines formulated in this way will be beneficial to the industries concerned and the Executive Director by setting the policy direction for community participation in the assessment of applications for authorisations for aquaculture and pearling in coastal waters in Western Australia. The specific substance of this Guideline follows.

2. BACKGROUND

The Executive Director and the Minister for Fisheries, as the case may be, determine applications for licences and leases over areas of the Western Australian marine environment to enable the operations of the pearling and aquaculture industries. These decisions are made after planning and consultation processes undertaken pursuant to the *Fish Resources Management Act 1994* and the *Pearling Act 1990*.

Pearling and pearl farms for the culture of the Australian South Sea pearl, *Pinctada maxima*, are managed under the provisions of the *Pearling Act 1990* and aquaculture, which also includes all other species of pearl oyster (referred to as non-*Pinctada maxima* pearls), is managed under the provisions of the *Fish Resources Management Act 1994*.

The two Acts prescribe the key requirements for the granting of licences and leases.

Under Section 92 of the *Fish Resources Management Act 1994* the Executive Director may grant aquaculture licences subject to conditions and being satisfied that, among other things, the activities to be conducted under the licence have been approved by other relevant authorities. This guideline provides guidance to the Executive Director on the processes to be used in assessing licence applications. Before granting an aquaculture licence, the Executive Director must advertise a notice of the proposal to allow *affected persons* the opportunity to object. Currently under the *Fish Resources Management Act 1994*, 'affected persons' are those who hold an aquaculture licence and are likely to be significantly affected by the proposal. Objections referred to the Minister are dealt with by a Tribunal appointed by the Minister.

Aquaculture leases are granted under Section 97 of the *Fish Resources Management Act 1994* by the Minister for Fisheries. The same consultation process set down in this

guideline will be used in the Minister's assessment of lease applications. The Minister must publish notice of the grant of a lease in the *Government Gazette*. There is no right of objection.

The Executive Director may grant leases, licences and permits under Section 23 of the *Pearling Act 1990* subject to a number of conditions being satisfied, and the Executive Director having regard to any Policy Guidelines issued by the Minister under the Act. Persons aggrieved by a decision of the Executive Director may appeal to the Minister. 'Persons aggrieved' includes a person who holds a pearl farm lease, pearling licence or hatchery licence.

Proposals can also be referred to the Environmental Protection Authority for environmental impact assessment which can be either an informal or formal process under the *Environmental Protection Act 1986*.

Fisheries Western Australia is undertaking and participating in the production of overall plans for several areas of the marine environment and further plans are intended. These plans should have wide community acceptance and provide for resolution of resource sharing issues for key areas of coastal waters which have potential for aquaculture and pearling. The plans will also provide a better basis for dealing with applications for authorisations by being more transparent and accountable.

The aquaculture and pearling industries must be developed on a sustainable basis. In order to achieve this, Fisheries Western Australia should move towards a single proactive planning and application procedure which involves wider community consultation, so that issues of concern can be addressed in the early stages, and any environmental issues identified and resolved before applications reach an advanced stage.

Government is also committed to the development of the aquaculture and pearling industries, given their significant economic and social benefit to the community, at both a state and regional level. As a matter of course therefore Government will be seeking to further develop these industries within the general guideline of ecologically sustainable development and taking into account any substantiated resource sharing issues arising from proposals.

3. OBJECTIVES

This guideline is intended to assist in the consideration of applications under Sections 92 and 97 of the *Fish Resources Management Act 1994*; and Section 23 of the *Pearling Act 1990* for leases.

This guideline indicates to the Executive Director, fishing industry sectors and the community my preferred approach to the assessment and community consultation procedure which is to be followed when considering applications for authorisations for aquaculture and pearling in coastal waters in Western Australia.

4. POLICY

Having ensured that an application is competent and contains all reasonable information to enable a decision to be made, including all information required by other decision making authorities such as the Department of Environmental Protection, the Executive Director will commence assessment of the application in accordance with the provisions of the Acts, and the procedure set down in sections 4(a) to 4(j) below. Checking of the application by officers of Fisheries Western Australia and subsequent advertising and/or distribution of the application for comment in accordance with Sections 4(a), (b), (c) and (d) below should occur within 21 days of receipt of a competent application (NB: In this guideline, 'days' relates to total days).

a) Referral to Decision Making Authorities

The Executive Director is required to refer applications and consult with relevant decision making authorities whose approval is required for the activities to be conducted under the authorisation. These may include, but may not be limited to:

- Department of Environmental Protection and, where relevant, Environmental Protection Authority;
- Department of Conservation and Land Management and Marine Parks and Reserves Authority (for proposals within gazetted Marine Reserves);
- Department of Transport (if relevant);
- Local Port Authority (if relevant);
- Department of Land Administration (for proposals which have an associated non-freehold land component);
- Local Government Authority (for proposals which have an associated land component or require land based access).

Proposals within a marine park or a marine management area must be referred to the Minister for the Environment for approval prior to the grant of an authorisation.

b) Consultation with Involved Agencies

The Executive Director will consult with involved agencies which may have expertise in, or be directly affected by or have an interest in, the activities to be conducted under the authorisation. These may include, but are not limited to:

- Relevant Local Government Authority;
- Department of Land Administration;
- Department of Conservation and Land Management;
- Marine Parks and Reserves Authority;
- Ministry for Planning;

- Department of Commerce and Trade;
- Water and Rivers Commission;
- Department of Resources Development;
- Aboriginal Affairs Department;
- Relevant Regional Development Commission;
- Department of Minerals and Energy;
- WA Tourism Commission.

There may be a different level of consultation for individual proposals. For example, for proposals which do not comprise a land component, the Department of Land Administration does not have an interest. Similarly, the interest of the Water and Rivers Commission extends to matters such as the management of certain waters in declared Management Areas, inland waters and water supply matters.

If a specific interest is drawn to the attention of the Executive Director, then that agency will be consulted to the extent that other agencies are consulted.

c) Consultation with Representative Community and Industry Groups

The Executive Director will consult with peak community and industry representative groups which may have expertise in, or be directly affected by or have an interest in, the activities to be conducted under the authorisation. These include, but are not limited to:

- Western Australian Fishing Industry Council (WAFIC);
- Aquaculture Council of Western Australia (ACWA);
- Pearl Producers Association (PPA);
- Recreational Fishing Advisory Committee and relevant Regional Recreational Fishing Advisory Committee;
- RECFISHWEST;
- Holders of pearling and aquaculture authorisations within 5 nautical miles of the proposed site;
- Native Title Holders and Claimants (if any) or their legal representative;
- Relevant Aboriginal Land Council or relevant representative Aboriginal body;
- Aboriginal Legal Service;
- Conservation Council of Western Australia (Inc.); and
- Australian Petroleum Production and Exploration Association Ltd.

The above peak representative bodies will be requested to ensure that appropriate regional associations or representative bodies/members are notified of proposals and advised that they can convey their comments direct to the Executive Director.

If a specific interest is drawn to the attention of the Executive Director, then that organisation will be consulted to the extent that other organisations are consulted.

d) Opportunity for Public Comment on Proposals

In addition to referral of applications to relevant organisations for comment, the Executive Director will also advertise proposals in the press seeking public comment.

There are three special circumstances where public comment will not be sought, although the public will be notified of the proposal. These are:

- (i) Where the proposal is in accordance with a plan for an area which has been duly adopted, within the last five years by a competent authority or authorities, after public consultation.

In this case the Executive Director will:

- consult with relevant decision making authorities, other involved agencies and representative community and industry groups identified in sections (a), (b) and (c) above for a 60 day period, and
- for public notification purposes, advertise in the press the receipt of any application which meets the above requirements.

- (ii) Where the proposal is for use of a site in exceptional emergency circumstances.

In this case, the Executive Director, after consultation with the Minister for Fisheries, may allow a proponent to use a site on an emergency basis without a full consultation process where:

- appropriate forward planning could not have foreseen the situation; and
- the circumstances will cause the proponent to be in contravention of the relevant Act and/or force the proponent to cease operations and cause economic hardship; and
- use of the emergency site will not exceed an eight month period; and
- use of the emergency site is unlikely to adversely affect other interests and clearance for use of the site has been obtained from relevant decision making authorities.

If approval is granted, the Executive Director should advertise the approval in the press and provide written advice to affected parties of the change.

- (iii) Where approval is sought to trial a site for a maximum period of two years and where the proposed site:

- is the subject of a formal application; and
- is not within 30km of a regional centre or, in the opinion of the Executive Director, in an otherwise high or multi use area; and
- is no larger than 1 hectare; and
- is in accordance with any other relevant guidelines in relation to, for example, permitted distances between sites; and

- is not subject to some other special circumstance identified by the Executive Director.

In this case, the Executive Director will:

- consult with relevant decision making authorities, other involved agencies and representative community and industry groups identified in sections (a), (b) and (c) above for a 30 day; and
- for public notification purposes, advertise in the press the receipt of any application which meets the above requirements.

Where the application does not meet the criteria for a trial site (as set out above), then the application should be subject to a full 60 day public consultation process. The Executive Director shall also exercise his discretion in considering test site applications taking into account matters such as the justification for the site, the amount of area, if any, already approved for the proponent and the performance criteria to apply.

Any approval under this section in no way guarantees approval for continued use of the site following the trial period. If the site proves suitable, continued use is subject to the full consultation process and, if considered necessary by the Executive Director, further application.

e) Provision of Information in Applications

Having regard to the confidentiality of some information in applications, the Executive Director should provide sufficient information from applications to enable respondents to have a proper understanding of the likely effect or impact of the proposal on the social and biological environments, and on their area of interest. Normally this will be:

- In the case of decision making authorities, the entire application excluding matters of finance;
- In other cases, a copy of the approved application form and/or a summary of information from the application including, but not restricted to:
 - the general location and a map of the area proposed,
 - whether the application is for finfish, molluscs, crustaceans or filter feeders and the general species involved,
 - a general description of culture methods proposed,
 - the location of other aquaculture and pearling farm sites within 5 nautical miles; and
 - advice where further information on applications can be obtained.

Maps showing the location of the proposed site and the location of other aquaculture and pearling farm sites within the region will be made available, on request, by Fisheries Western Australia.

f) Time Limit on Submissions

To ensure that submissions are taken into account in the assessment process they are to be received within 60 days or, where specified, within 30 days. When the consultation process involves statutory processes as a result of the responsibility of a decision-making authority, different timeframes for that particular decision-making authority will apply.

g) Matters to be Considered When Making a Submission

The public consultation process provides an opportunity for any interest group or person to make comment on a proposal. When an interest group or person has been given an opportunity to comment on, or to put a case against, a proposal it is incumbent upon that group or person to use the opportunity to put their best case. Decision making on an application can only proceed on the substance and quality of information available. As a result, respondents should ensure when making a submission that all relevant information including, where possible, supporting data, evidence or justification, is provided.

The Executive Director will make available a pro-forma to assist Government agencies, the public and community groups with the preparation of a submission on an application. Additional pages should be attached to the proforma if space is insufficient.

h) Advice to Applicant on Submissions

Within 7 days of the closing date of submissions, the Executive Director will provide to the applicant copies of all submissions received and provide an opportunity for the applicant to respond. This will allow a balanced consideration of the application and an opportunity for the applicant to make appropriate amendments or changes to the proposal. At this stage the applicant has a 28 day period in which to provide a response to any submission or to make any formal revisions to the proposal.

Any revision to the proposal must be formally advised to Fisheries WA. In the case of a 'major' revision, this must be by way of a fresh application. In the case of a 'minor' revision, this must be by way of either written notification to the Executive Director (which must include precise details of the amendment to the application) or in another manner specified by the Executive Director. The criteria for a 'major' and a 'minor' revision is set out in (i) below.

If the applicant does not respond within 28 days, the Executive Director will commence his statement of decision with a view to determining the application within the next 28 day period.

i) Revision of Applications

A formal revision to an application [or an application to vary an existing authorisation (refer section o)] notified in the appropriate manner to the Executive Director, will be treated as either 'major' or 'minor'.

A revision to an application or an application to vary an existing authorisation shall be considered to be 'minor' in the following circumstances:

- The revision results in a re-alignment or modification of the proposed site or existing site which may reduce the impact of the proposal and does not result in an increase in total area or a substantially new site (ie. 60% or less new water); or
- The revision results in the addition of a like-species to the application or authorisation; or
- The revision results in a change to the proposed culture methodology which may reduce the impact of the proposal.

All other revisions will be considered as major, particularly those which result in a substantially new site or a new site entirely, and will require a new application. The criteria of 60% outlined above should be seen as a guide only and as a maximum figure. The Executive Director may consider in a particular circumstance that discretion is required to move below this figure.

'Minor' variations to an application (or to an existing authorisation) are required to be referred to relevant decision making authorities, to those individuals and groups which provided comment on the original application and to any other group, which in the opinion of the Executive Director, may have an interest in the proposal for a 30 day comment period. The receipt of any such application must also be advertised. However, in the case of an existing authorisation, if the Executive Director is of the opinion that a proposed variation to a particular site is subject to some special circumstance (eg. is within a high or multi use area) then the application shall be subject to a 60 day public consultation process.

For 'major' variations the application and consultation process commences afresh.

Revisions to an application or an application to vary an existing authorisation which result in a very small adjustment to the area (ie. less than 10% new water) and are not within 30km of a regional centre or, in the opinion of the Executive Director, in an otherwise high or multi use area may be determined by the Executive Director subject to clearance from relevant decision making authorities. The Executive Director should provide details of any such determination to those groups which, in the opinion of the Executive Director, may have an interest in the proposal.

In cases where the revision simply results in withdrawal of a proposed or existing site, or portion of a proposed or existing site, or withdrawal of a particular species, further consultation may not be necessary and the Executive Director may proceed to determine the application.

Revisions to an application which do not affect the substance of an application (eg. change of address) will be considered immaterial.

j) Further Consultations and Timeframes

If following (h) above, the application is not modified or amended by the proponent and all decision-making authorities have completed their assessments, then the Executive Director will commence his statement of decision with a view to determining the application within the next 28 day period.

If the application is modified by the proponent as a result of the consultation process and results in a minor revision [refer (i) above] to the proposal, the Executive Director should within 7 days, provide details of the revised application to relevant decision making authorities, and to those individuals and organisations which provided comment on the original application. The Executive Director will also advertise in the press the receipt of any such revision. Following the receipt of any further advice or submissions within a 30 day period and subject to all decision making authorities having completed their assessments, the Executive Director will commence his statement of decision with a view to determining the application within the next 28 day period. In cases where the revision simply results in withdrawal of a proposed site, or portion of a proposed site, or withdrawal of a particular species, further consultation may not be necessary and the Executive Director may proceed to determine the application.

The Executive Director is able to require of an applicant or other relevant party such further information in respect of the application to enable a determination to be made based on an appropriate level of knowledge. Such a determination will be made by the Executive Director at the conclusion of the consultation process when all information from the submission period and any subsequent amendments to the application are to hand.

If the consultation process results in a major revision [refer (i) above] to the original proposal, the applicant will be required to submit a new application and the process will commence afresh.

k) Timeframes for Assessment and Decision Making

Whilst the assessment and decision making process for Fisheries Western Australia will operate in accordance with the timeframes outlined in Sections 4(a) to 4(j) of this Guideline, the Executive Director will not be in a position to complete the decision making process until all approvals have been obtained from relevant decision making authorities. The total timeframe for applications to be determined may therefore differ for individual applications.

As a matter of general policy, it is not in the best interests of the pearling and aquaculture industries for applications to not be determined within appropriate timeframes. There is also a need to provide greater certainty for both proponents and members of the public in the processes and timeframes to be used in assessing applications. As a result, applications will not be dealt with by Fisheries Western Australia in open timeframes and applicants will not be able to continually amend or revise applications.

To ensure that applications reach a conclusion, if the following circumstances apply-

- the relevant decision making authorities have completed their assessments and advised the Executive Director accordingly and
- the Executive Director has all information before him arising from the consultation process undertaken in accordance with this guideline and
- the timeframes administered by Fisheries Western Australia have extended beyond 200 days since the date of the original application-

then the Executive Director should commence his statement of decision with a view to determining the application within the next 28 day period.

l) Determination of Applications - Principles and Important Matters

When all advice is to hand including approvals from relevant decision making authorities, the Executive Director will determine the application having regard to those aspects of submissions which bear upon matters of substance, and matters which are relevant to the portfolio or legislative charter of respondents and the following matters:

- the provisions of the *Fish Resources Management Act 1994* or the *Pearling Act 1990*, as applicable;
- the provisions of other relevant legislation including Native Title legislation and the *Land Administration Act 1997*;
- any other Ministerial Guidelines;
- submissions received and any further consultations under (j) above;
- whether the proposal involves a limitation on access to the proposed waters;
- any reports and advice from professional and technical officers of Fisheries Western Australia;
- any advice sought and received by the Executive Director;
- the possible impact on navigation;
- the possible impact on recreational fishing;
- the possible impact on commercial fishing and other commercial activities including tourism;
- the possible impact on other pearlery or aquaculturists;
- native title claims and the possible impact on native title rights and interests;
- the possible impact on the environment or CALM Estate;

- the possible impact on visual amenity and potential noise pollution;
- The value to industry and the community from increased aquaculture or pearling production or activity from the proposed site;
- The economic benefit to local communities from the presence of aquaculture and pearl companies and farms in their region; and
- any other advice or information the Executive Director considers relevant.

The processes used for assessment of applications within Fisheries Western Australia, and the methods used to arrive at a decision or recommendation, are matters for the Executive Director's discretion. For example, in the case of aquaculture proposals, the Executive Director may use the Inter Departmental Committee on Aquaculture to assist the consultation and decision making process.

m) Statement and Advice of Decision

As soon as possible after a decision on an application has been made or proposed and the notification and other requirements of the relevant Act fulfilled, the Executive Director should:

- provide advice to the applicant including advice on the appeal or objections provision which are applicable;
- advertise the decision or proposed decision in accordance with the provisions of the relevant Act [refer 4(n) below];
- provide all persons or bodies who made submissions with a copy of the decision statement, except where matters reflecting on intellectual property, financial affairs, character or other confidential aspects of the application are involved, in which case a summary of the decision statement may be provided and advise on appeal or objection provisions which are applicable.

n) Procedures for Advertising

The Executive Director will ensure that advertisements for either applications or decisions appear on a set day or days and in a set location in the *West Australian* newspaper. Advertisements will appear on a weekly basis. Advertisements should also appear in the relevant regional and/or local newspaper.

o) Applications to Vary Authorisations

The holder of a pearling or aquaculture lease or licence may apply to vary their authorisation to, for example, modify an existing area or method. In this circumstance, the Executive Director will determine whether the proposed variation is minor or major, in accordance with section 4(i) of this guideline.

If the proposed variation is minor, the Executive Director should provide details of the proposed variation to relevant decision making authorities, to those individuals and organisations which provided comment on the original application and to any other group which, in the opinion of the Executive Director, may have an interest in the proposal. The Executive Director will also advertise in the press the receipt of any such application. Following the receipt of any advice or submissions within a 30 day period and subject to all decision making authorities having completed their assessments, the Executive Director will proceed to determine the application [ie. the process will proceed as per sections 4(j) to 4(n)]. However, if the Executive Director is of the opinion that a proposed variation to an existing site is subject to some special circumstance (eg. is within a high or multi use area) then the application shall be subject to a 60 day public consultation process.

An application to vary an existing authorisation which results in a very small adjustment to the area (ie. less than 10% new water) and the area is not within 30km of a regional centre or, in the opinion of the Executive Director, in an otherwise high or multi use area may be determined by the Executive Director subject to clearance from relevant decision making authorities. The Executive Director should provide details of any such determination to those groups which, in the opinion of the Executive Director, may have an interest in the proposal.

If the proposed variation is major, the application will be treated as if it was a new application and the process will commence afresh.

In cases where the revision simply results in withdrawal of a proposed or existing site, or portion of a proposed or existing site, or withdrawal of a particular species, further consultation may not be necessary and the Executive Director may proceed to determine the application.

Applications to vary an authorisation which do not affect the substance of the authorisation will be considered immaterial.

p) Pearl Oyster Holding Sites

Holding sites are used by pearling companies, generally in the second half of the year, to temporarily hold seeded pearl shell prior to transport to pearl farm leases.

Holding sites are considered to be low impact for the following reasons:

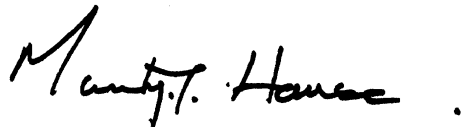
- Approval for a holding site does not restrict or preclude access by other legitimate users
- Holding sites are used on a temporary basis only and do not result in the grant of any lease rights associated with a particular site
- Under the Act, all shell must be removed from holding sites by 31 December each year (unless otherwise specified). Pearling companies also remove apparatus from the site

- Bottom culture is used at holding sites
- Anchors and bottom structures shall be positioned to minimise any potential damage to corals and seagrass beds. Apparatus is not to be placed on top of hard reef platforms.

Approval for the use of an area as a holding site is considered by Fisheries WA and, given their low impact nature, specific consultation is not considered necessary. However, in cases where the holding site is in a high or multi use area, within 30km of a regional centre or, in the opinion of the Executive Director, subject to some other special circumstance, the full consultation process set down in this Guideline will apply.

5. SUMMARY OF PROCESS AND TIMEFRAMES

A summary of the Fisheries Western Australia consultation and assessment process for new authorisations and the timeframes to apply at each stage is provided in the flow chart appended to this guideline.

A handwritten signature in black ink that reads "Monty House". The signature is written in a cursive, slightly slanted style.

Monty House MLA
MINISTER FOR PRIMARY INDUSTRY; FISHERIES

December 1998

PROCESS FOR THE ASSESSMENT OF PEARLING AND AQUACULTURE PROPOSALS FOR COASTAL WATERS OF WESTERN AUSTRALIA

