

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

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



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

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and Section 24 of the *Pearling Act 1990*.

1. INTRODUCTION

The Executive Director of the Fisheries Department of Western Australia 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 these guidelines 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 determination of these guidelines, 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 that have been consulted in the formulation of these Guidelines are [names to be inserted]

Once the consultation process is complete, the Guidelines are published to inform the relevant industry segment and the community about the considerations to which the Executive Director has regard in performing his functions under the Acts. To ensure that the guidelines are readily accessible to interested members of the community, copies of the guidelines are made available to the public free of charge at the offices of the Fisheries Department. Notice of the publication and availability of the guidelines appears typically in the Government Gazette, but may appear in the *West Australian*.

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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.

Guidelines have a specified lifetime but are nonetheless subject to review generally. Principles in guidelines are stated broadly but experience of them in operation may require that they be reviewed in the interim. However, industry and the community affected by the policy changes would have very little certainty in the future if consideration of matters concerning their industry if the guidelines were reviewable at any time. Therefore these guidelines 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 guidelines, the usefulness of the guidelines for decision making and any recommendations for amendment or replacement of the guidelines. The Executive Director should provide the report on the guidelines no later than [31 July 2005].

I believe 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. I now turn to the specific treatment of the substance of this Guideline.

2. BACKGROUND

The Fisheries Department 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)*. These are thorough and extensive processes but difficulties arise because they do not meet public expectations on reporting or objection/appeal processes relating to matters of public interest. These difficulties create a level of concern in the community and impede the development of the pearling and aquaculture industries.

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 and the Fisheries Department has established separate procedures to deal with applications for authorisations:

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- Pearling applications for *Pinctada maxima* pearls are processed by the Broome office of the Fisheries Department and determined by the Executive Director.
- Marine aquaculture applications, which include finfish, shellfish, non-*Pinctada maxima* pearls and all other species, are processed through the Inter-Departmental Committee on Aquaculture (IDCA) and determined by the Executive Director.

Under Section 92 of the *Fish Resources Management Act 1994* the Executive Director of Fisheries 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. Before granting an aquaculture licence, the Executive Director must advertise a notice of the proposal to allow *affected persons* the opportunity to object. *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 Minister must publish notice of the grant of a lease in the *Gazette*. There is no right of objection.

The Executive Director of Fisheries 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, however that right is limited to holders of leases and licences and others directly affected, and is not available to the general public.

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*.

The present processes for the granting of licences and leases are reactive and largely internal to the Fisheries Department and Government agencies, relying on advice sought from identified industry, recreation and community groups to address equity questions. The advice of the relevant Local Government Authority is often taken to represent the broader interests of the community not represented by any of the other parties consulted. The notification, objection and appeal processes are generally limited to applicants, existing lessees, licence holders and people within the industries.

I am aware that the Fisheries Department is undertaking and participating in the production of overall plans for several areas of the marine environment and that further plans are intended. These plans will have wide community acceptance and will 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 in a more transparent and accountable manner.

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Through the *Service Vision* of its *Customer Service Charter* the Fisheries Department strives to give its customers continued improvement in its consultation process. It is in the best interests of the aquaculture and pearling industries to develop good relations with local communities and to cultivate an image generally of aquaculture and pearling as environmentally sustainable and socially responsible industries. In order to achieve this, I believe the Fisheries Department should move towards a single pro-active planning and application procedure which involves wider community consultation, so that issues of concern can be addressed in the early stages, and any environmental problems can be resolved before applications reach an advanced stage.

3. OBJECTIVES

These guidelines are 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.

These guidelines are to indicate 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, the Executive Director should commence assessment of the application in accordance with the provisions of the Acts, and the following procedure:

a) Referral to Decision Making Authorities

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

- Department of Environmental Protection /Environmental Protection Authority;
- Department of Conservation and Land Management ;
- Department of Transport (if relevant);
- Local Port Authority (if relevant).

b) Consultation with Involved Agencies

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

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- Relevant Local Government Authority;
- Department of Land Administration;
- Ministry for Planning;
- Department of Commerce and Trade;
- Waters and Rivers Commission;
- Department of Resources Development;
- Aboriginal Affairs Department;
- Relevant Regional Development Commission.

c) Consultation with Community and Industry Groups

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

- Western Australian Fishing Industry Council;
- Aquaculture Council of Western Australia;
- Pearl Producers Association;
- 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);
- Aboriginal Legal Service;
- Relevant Aboriginal Land Council;
- Local conservation groups or progress associations;
- The Conservation Council of Western Australia (Inc.);
- Other relevant interest groups.

d) Public Advertising of Proposals

The Executive Director should advertise proposals in the press seeking public comment on a proposal, except where:

- the Executive Director is satisfied on information presented that the applicant has consulted widely and/or has recently advertised the proposal in the press as part of the formulation of the application and thus is able to form an assessment of the range of environmental and equity issues involved in the application;
- another decision making authority is required under its legislation to seek public submissions on the proposal;
- the proposal is in accordance with a plan duly adopted for the area by a competent authority after public consultation;
- the proposal is for minor change of boundary or modification of an existing area or method;
- the proposal:
 - does not involve restrictions on access for recreational fishing and other activities;

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- does not involve surface structures other than navigation markers and floats;
- is unlikely to affect other commercial operations including fishing and tourism; and
- is in a remote location.
- The proposal is for a temporary authorisation or use, or for a site used on a temporary basis and is unlikely to affect other interests.

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 with 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.

f) Further Consultations

If the Executive Director considers further consultation on an application is desirable, this may be by letter, personal interview or meetings, press advertisement, or a combination of these.

g) Time Limit on Submissions

This will normally be six weeks. The Executive Director may grant an extension of time when requested, provided reasonable grounds to do so are given.

h) Content of Submissions

The Executive Director may provide a pro-forma to assist the public and community groups with the preparation of a submission on an application.

The Executive Director should have regard to those aspects of submissions which bear upon substantive matters of community concern, and matters which are relevant to the portfolio or legislative charter of respondents.

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9 Determination of Applications - Principles and Important Matters

When all advice is to hand, the Executive Director will determine the application having regard for, but not being limited to, 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;
- any other Ministerial Guidelines;
- public submissions received within reasonable time;
- whether the proposal involves a limitation on access to the proposed waters;
- any reports and advice from professional and technical officers of the Fisheries Department;
- 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 pearlers or aquaculturists;
- native title claims;
- the possible impact on the environment or CALM Estate;
- the possible impact on visual amenity and potential noise pollution;
- any other advice or information the Executive Director considers relevant.

The processes used for assessment of applications within the Fisheries Department, and the methods used to arrive at a decision or recommendation, are matters for the Executive Director's discretion.

10 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 all persons or bodies that 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.
