



Department of
**Primary Industries and
Regional Development**

Fisheries Occasional Publication No. 134

Aquaculture Development Plans

Principles and Guidelines Relating to Aquaculture Development Plans
to address Performance Criteria for Aquaculture Licences and Leases

December 2017

Important disclaimer

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1 INTRODUCTION

Aquaculture is one of Australia's fastest growing primary industries and in Western Australia the industry has significant capacity for growth. The WA Government has recognised and supports aquaculture as a legitimate use of the State's land and aquatic resources and as a strategically important industry.

It is in the better interest of the State and the community to secure an optimal return from Government investment in aquaculture; one means of doing so is to keep sites available for legitimate operators who are more likely to make optimum use of the resource and hence contribute to aquaculture development in Western Australia.

Given that a lease granted for aquaculture utilises a valuable public asset, the public has the right to be assured the maximum community value has been, or will be, extracted by the private entity taking a commercial risk with those assets. In the same way that other forms of leases are assessed for their continuing compliance with the terms and conditions of the lease, the Department of Primary Industries and Regional Development (Department) has a responsibility for assessing and evaluating continuing compliance with lease conditions and performance criteria. This is particularly the case for sites within aquaculture development zones, the establishment of which requires significant investment of public monies.

2 SCOPE AND OBJECTIVES

This Fisheries Occasional Publication (FOP) sets out requirements and processes for the establishment and implementation of Aquaculture Development Plans (ADP) for defined aquaculture activities.

The purpose of an ADP is to ensure aquaculture projects authorised by the Department meet identified, agreed development targets to ensure aquaculture licence holders can demonstrate they are using their sites for the purpose for which the licences and leases were granted.

The key objectives of the principles set out in this FOP are to:

- Set out the processes by which the Department will implement, administer and manage performance criteria and ADPs; and
- Provide guidance on the layout and contents required for an ADP.

3 BACKGROUND

The Department has explored a variety of options for implementing performance criteria, including, by regulation, imposing certain conditions on an aquaculture licence, utilising existing Management and Environmental Monitoring Plan legislation, or through a condition on the relevant lease.

Investigation of these options indicated that performance criteria would be most effectively implemented as lease conditions, with referral to an ADP, for the following reasons. If performance criteria were imposed as a condition on the licence, non-compliance with or a

breach of that condition would mean the relevant penalties would immediately apply per the *Fish Resources Management Act 1994* (FRMA), which could result in a situation where the licence holder does not have the ability to remedy the breach.

Requiring applicants to specify performance criteria in an ADP enables them to propose a set of performance criteria they consider relevant to their specific operations and circumstances. Licence holders must then meet these performance criteria to demonstrate they are using the area for the authorised purpose. Conditions in the lease provide the power and mechanism to deal with circumstances where a condition of the lease may not be met, by affording the lease holder flexibility to negotiate amendments to the ADP in the event they are unable to meet the criteria for various reasons.

4 PRINCIPLES AND GUIDELINES

4.1 What is an Aquaculture Development Plan?

The purpose of the ADP is to provide agreed performance criteria against which the aquaculture activity may be reviewed and assessed. Developed by the aquaculture licence and lease holder or applicant, an ADP outlines the proposed development objectives, including any staging, milestones and associated growth in production capacity. An ADP must demonstrate and quantify realistic and achievable timeframes and key milestones and provide supporting rationales.

ADPs are not intended to dictate how licence holders conduct their businesses; their purpose is to provide and document agreed performance criteria to ensure that aquaculture licence holders are using their sites for the purpose for which the licences were granted.

4.2 Requirements to have an Aquaculture Development Plan

The Department intends to apply performance criteria on all aquaculture licences and leases (unless on private land), by way of an ADP associated with their aquaculture lease, which will be tailored to their individual operation.

The requirement will be imposed by way of conditions on the lease. This means:

- All new aquaculture applications will need to include an ADP, which must be approved by the CEO prior to the granting of a licence and lease.
- All existing licence holders must have an ADP and lease in place by an agreed time negotiated with the Department and approved by the CEO.

4.3 Lease Conditions

An example of the standard lease conditions with respect to the ADP is set out below:

- “XX. Performance
 - (1) At the commencement date, the Lessee must have in place an Aquaculture Development Plan that has been approved by the CEO.
 - (2) Subject to clause XX.3, the Lessee must meet the targets set out in the ADP.
 - (3) The minimum level of performance for a lease will be 70% of the predetermined and agreed levels of development and agreed timeframes set out in the ADP. If development falls below this level it may result in the Lessor reviewing the lease.
 - (4) Having made reasonable endeavours to contact the lease holder prior to undertaking any action, the CEO may, at the CEO’s discretion, undertake site inspections for the purposes of assessing performance of a lease and report to the Lessor the findings of such inspections.
 - (5) The CEO may review actual performance against those criteria nominated in the ADP, and if the performance does not reasonably meet forecasts in the ADP then the lease may be reviewed. The Lessee must provide the Lessor with reasonable justification and evidence to avoid committing an offence under s.100A of the Act.
 - (6) Where there is a significant difference between the current status of development and that submitted in the current ADP and reasonable justification is given to the satisfaction of the CEO, the Department may require the proponent to present a revised ADP. Where a revised ADP is not produced and performance continues to fail to meet that of the original ADP, then the Lessor may review the lease.

4.4 Process for Non-Compliance with an Aquaculture Development Plan

The Department understands that every aquaculture operation varies according to sites, species and production systems. The targets or milestones set in an ADP may not always be achievable for reasons beyond a company’s control, or if there is a change in the company’s business direction or circumstances. ADPs will be reviewed with this in mind and aim not to dictate how a business should be run, but to ensure that licence holders are conducting legitimate aquaculture activities and actively attempting to achieve the specified targets.

The conditions on the lease will stipulate the requirements for compliance and the penalties of non-compliance. In the first instance where the performance does not reasonably meet forecasts in the ADP then the lease may be reviewed. The Lessee will be given the opportunity to provide the Lessor with reasonable justification and evidence to avoid committing an offence under s.100A of the FRMA. Where a revised ADP is not produced, as requested, and performance continues to fail to meet that of the original ADP, then the Lessor may review the lease and consider termination of the lease with respect to the lease deed, as per the example below:

- Clause 20 – Termination
 - s.100(1)(a) – Minister may terminate lease if leased area is no longer being used for the purposes for which the lease was granted.
 - Add sub-clause:
 - If the Lessee does not meet the targets set out in the ADP for two consecutive years, the Lessor may terminate the lease under s.100(1)(a) of the Act.

4.5 Performance Criteria Review and Amendments

The performance criteria set out in ADPs may be reviewed according to the milestones identified in the ADP or at the discretion of the Chief Executive Officer of the Department. Licence holders may apply to the Department in writing if they wish to amend any aspects of their ADPs, providing appropriate justification.

The review will be undertaken by assessment of production returns, which are required to be submitted to the Department under regulation 64 of the *Fish Resources Management Regulations 1995*. Site inspections may also be undertaken by Compliance Officers of the Department.

4.6 Aquaculture Development Plan Template

The template at **Appendix 1** is to be used by aquaculture licence applicants and licence holders to keep consistent format across all ADPs. The contents of an ADP will differ between aquaculture operations, as performance criteria will take into account the individual operation's characteristics, such as, species type, location, and production systems.



AQUACULTURE DEVELOPMENT PLAN

The purpose of an Aquaculture Development Plan (ADP) is to provide performance criteria that will be used to ensure aquaculture licence holders are using the authorised sites for the purpose for which the licences were granted. The production returns provided by the licence holder will be reviewed periodically to ensure the performance criteria set under the ADP are being met.

The ADP is linked directly to the conditions on the corresponding Aquaculture Lease and is further outlined in the document *Aquaculture Development Plans – Principles and Guidelines Relating to Aquaculture Development Plans to address Performance Criteria for Aquaculture Licences and Leases*. The table set out below provides details of the development targets for the aquaculture licence and lease identified. For new licence applications, these details must be consistent with any relevant information provided in the application.

Assessment

The Sublessee must meet the Development Targets to the standard required by the Aquaculture Development Plan.

Implementation

The conditions on the lease will stipulate the requirements for compliance and the penalties of non-compliance. In the first instance where the performance does not reasonably meet forecasts in the ADP then the lease may be reviewed. Without limiting any of the Minister's rights under the lease deed, if, in the opinion of the Minister, the Sublessee's performance does not meet, or is unlikely to meet, the Development Targets, the Minister may by notice require the Sublessee to provide written explanation and supporting evidence as to the reasons for the apparent under-performance.

Review and Amendments

The development targets of ADPs may be reviewed according to the milestones identified in the ADP or at the discretion of the Chief Executive Officer of the Department of Primary Industries and Regional Development (DPIRD). A licence holder may apply to DPIRD in writing if they wish to amend any aspects of their ADPs, providing appropriate justification.

The review will be undertaken by assessment of production returns, which are required to be submitted to the Department under r.64 of the *Fish Resources Management Regulations 1995*. Site inspections may also be undertaken by Compliance Officers of DPIRD.

AQUACULTURE DEVELOPMENT PLAN

[Company Name]

Lease Number: ALXXXX
Licence Number: IDCAXXXX

DEVELOPMENT TARGETS

Initial action
<ul style="list-style-type: none">Initial activity proposed (for example first stocking of juvenile fish in sea cages by dd/mm/yyyy).
2 Year Milestone
<ul style="list-style-type: none">Minimum annual production (harvest) of XX tonnes (whole weight) by dd/mm/yyyy.
5 Year Milestone
<ul style="list-style-type: none">Minimum annual production (harvest) of XX tonnes (whole weight) by dd/mm/yyyy.
10 Year Milestone
<ul style="list-style-type: none">Minimum annual production (harvest) of XX tonnes (whole weight) by dd/mm/yyyy.

EXECUTION (Signed by the Lessee)

/ / yyyy

Name: _____ Title: _____
Company: _____

Date Revised: dd/mm/yyyy	Version: XX	Original Plan Date Submitted: dd/mm/yyyy
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Prepared for Department of Primary Industries and Regional Development, Western
Australia

APPROVED (DPIRD)

/ / yyyy

DEPUTY DIRECTOR GENERAL

As CEO

As Delegate for the Minister for
Fisheries

Date Revised: dd/mm/yyyy	Version: XX	Original Plan Date Submitted: dd/mm/yyyy
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