

STATEMENT OF DECISION

APPLICATION TO VARY AN AQUACULTURE LICENCE

Information contained in this Statement of Decision that may be considered commercial-in-confidence has been redacted.

File Number: L2367/13
Applicant: MPA Fish Farms Pty Ltd
Application Date: 18 December 2015
Application Type: Variation of an Authorisation

1 INTRODUCTION

Background facts

MPA Fish Farms Pty Ltd ("MPA") (ACN 108 494 079) is the holder of Aquaculture Licence No. 1465 ("the Licence").

The Licence authorises the culture of the following species:

- barramundi (*Lates calcarifer*);
- bat wing pearl oyster (*Pteria penguin*);
- black lip pearl oyster (*Pinctada margaritifera*);
- black tiger prawn (*Penaeus monodon*); and
- redleg banana prawn (*Penaeus indicus*).

The authorised site includes 700 hectares of water within Cone Bay and a hatchery at Turtle Island, and is subject to certain conditions.

MPA is also the holder of a lease granted under s.97 of the *Fish Resources Management Act 1994* ("the Act"). The lease encompasses the area of water authorised under the Licence, but does not cover Turtle Island. MPA sub-leases Turtle Island and the infrastructure on the Island from Maxima Pearling.

On 18 December 2015, MPA made an application to the CEO of the Department of Fisheries ("Department") under s.142 of the Act, to vary the Licence so as to include an additional 800 hectares as part of the authorised site.

The authorised site and the additional area applied for are both located within the Kimberley Aquaculture Development Zone ("KADZ").

The KADZ was declared by the Minister for Fisheries in August 2014. Occupying a total area of approximately 2,000 hectares, the KADZ is located within Cone Bay at the northern end of King Sound.

On 30 October 2015, the Department invited applications from interested persons for aquaculture licences and leases within the KADZ, stating that it intended to

begin considering applications received on or before 18 December 2015, with a view to decisions being made as soon as practicable after that date.

Details of the Licence variation application

The application was dated 18 December 2015 and received by the Department on that date.

The first page of the application form initially specified “Marine Produce Australia Limited” and “MPA Fish Farms Pty Ltd” as the applicants. MPA subsequently confirmed that it was the applicant.

The application seeks to vary Schedule 2 of the Licence instrument to include an additional 800 hectares of water to the authorised site.

Attachment 1 provides a site map, which shows the 700-hectare area currently authorised under the Licence and the additional area sought.

MPA is also seeking the addition of the following marine finfish species to Schedule 1 of the Licence:

- giant grouper or Queensland groper (*Epinephelus lanceolatus*);
- estuary cod or gold spotted rock cod (*Epinephelus coioides*);
- common coral trout (*Epinephelus leopardus*); and
- cobia (*Rachycentron canadum*).

The KADZ has been assessed for marine finfish, the above species occur naturally in the area and hence there is no reason why they should not be added to the Licence.

As the Strategic Proposal for the KADZ is based on marine finfish, it will be necessary to remove the marine shellfish species from Schedule 1 of the Licence if the variation to extend the area of operation is approved. MPA has provided its written consent for the removal of bat wing pearl oyster, black lip pearl oyster, black tiger prawn and redleg banana prawn from the Licence.

2 COMPETENCE OF THE APPLICATION

The objects of the Act enable the allocation of resources to achieve the optimum benefits to the State and community. To ensure the sites within the KADZ are allocated properly, the process to assess applications received requires consideration of individual applications according to the relevant provisions of the Act, according to merit, and may also require consideration of applications competing for the same or overlapping areas.

The application has been made under s.142(1)(a) of the Act, which provides that –

“The CEO may vary an authorisation if – (a) the holder of the authorisation applies to the CEO for the variation,”

Section 142(2) of the Act states that *“if a person applies to the CEO for the variation of an authorisation the person is not entitled to the variation as of right”*.

I consider that seeking to increase the area to which the authority of the licence extends constitutes a “variation” within the meaning of the Act, in the same way that substituting an entirely different area or partially replacing the area would constitute a variation.

There are no express limitations on the face of the provision; the power therefore appears to be unconstrained.

Although s.142(1)(a) does not provide for any express limitations on the exercise of the power in respect of an aquaculture licence, or any other authorisation, I regard s.142 as a general provision that is intended to enable variation of an authorisation where that would not be in conflict with other provisions of the Act that are more restrictive or exhaustive.

By way of contrast, if MPA had instead applied under s.92 of the Act for a new (second and discrete) licence for the additional area, a number of express legislative preconditions would have had to be satisfied before the power to grant that licence would become enlivened.

In my view it would be unreasonable to construe the legislation as preventing a new licence from being granted to authorise a certain activity in a specified area because certain express preconditions were not satisfied, yet permitting an existing licence to be varied to authorise that same activity in that same area without the same preconditions being satisfied.

The substance of the variation application is to authorise aquaculture in areas where aquaculture is not presently authorised.

I therefore consider that the power under s.142 to vary the Licence in the manner applied for may be exercised where the preconditions that would need to be satisfied if a new licence had been applied for are first satisfied.

Accordingly, consideration of the variation application will first give consideration to the issues that would need to be satisfied if the application had been for the grant of a new licence.

Subject to those issues being satisfied, I will proceed to decide the application on its merits.

3 RELEVANT ISSUES TO BE SATISFIED

On the basis of the above, the matters in s.92 and s.92A of the Act require consideration.

In connection with this consideration, reference is made to s.246 of the Act and Ministerial Policy Guideline No. 8 *Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia* ("MPG 8").

MPG 8 provides that where the holder of an aquaculture licence applies to vary the licence, for consultation to be undertaken with relevant Government agencies and representative community and industry groups and including the opportunity for public comment.

In this case, the Strategic Environmental Assessment ("SEA") process to establish the KADZ included a comprehensive public consultation process. This consultation process was a requirement of the scoping guidelines that the Environmental Protection Authority ("EPA") provided to the Department.

The consultation process undertaken as part of the Strategic Assessment for the KADZ exceeds the consultation that would normally be required under MPG 8. I am therefore of the view that the consultation undertaken for the establishment of the KADZ is taken as consultation on the variation, so additional consultation on the variation is not required.

Described in the Assessment on Proponent Information document ("the API document"), the consultation process for the KADZ comprised the following three phases.

1. May – June 2012. Initial written notification to stakeholders advising the scope and timing of the project, including an invitation to register to receive newsletters and additional information on identified key issues. Stage 1 included personal meetings in Derby, Broome and Perth.
2. July 2012 – November 2013. Meetings with commercial fishing associations and mail-outs to all commercial fishing licence holders (through the WA Fishing Industry Council) and periodic newsletters being sent out as well as made available on the Department's website. Phase 2 also provided website updates, afforded opportunities for comment and compassed key stakeholder comment periods for the API Document, the Management Policy and the EMMP.
3. March – April 2014. Declaration of the KADZ and calls for expressions of interest.

The consultation provided project updates and invited input and guidance from other Government agencies, regional stakeholders, local Government, Industry, indigenous communities and native title claimants throughout the development process. Section 6 of the API document provides detailed information about the consultation process, including the submissions made by the various stakeholders and the Department's response to those submissions.

The API document is available at:

<http://www.epa.wa.gov.au/EIA/EPAREports/Documents/1504-Assessment%20on%20Proponent%20Information%20Document%20FINAL.pdf>

I have read and considered the summary of key stakeholder consultation, any issues identified and how they were addressed. Where relevant, those matters arising out of the consultation process that are of greater significance are referred to in the analysis of significant matters below.

The matters arising by reason of s.92 and s.92A of the Act are twofold:

1. The criteria specified in s.92(1); and
2. The Management and Environmental Monitoring Plan ("MEMP").

I will now consider each of these matters.

3.1 Criteria in s.92(1)

Under s.92(1) of the Act, the CEO may grant an aquaculture licence to a person if satisfied of all of the following:

- the person is fit and proper to hold an aquaculture licence;
- the person has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted;
- it is in the better interests of the State and the community to grant the licence;
- the proposed activities are unlikely to adversely affect other fish or the aquatic environment;
- the proposed activities have been approved by other relevant authorities; and
- any other matters prescribed for the purposes of this subsection.

(a) "Fit and proper person"

S.92(1)(a) of the Act requires the CEO to be satisfied that a person who has applied for an aquaculture licence is a fit and proper person to hold an aquaculture licence.

MPA has been the holder of the Licence since February 1999 and has been conducting aquaculture at Cone Bay under the authority of that Licence. No circumstance has occurred during that time to question the honesty, knowledge or ability of MPA. This history supports the conclusion that MPA is fit and proper to hold an aquaculture licence to culture the species authorised under the Licence.

Ministerial Policy Guideline No. 19 titled *Matters Of Importance In Respect Of The "Fit And Proper Person" Criterion For Authorisations Under The Fish Resources Management Act 1994* ("MPG 19") provides a discussion of the types of considerations relevant to the "fit and proper person" consideration by reference to the key concepts of honesty, knowledge and ability.

MPG 19 sets out two matters of importance: firstly, consideration of the extent to which persons may act on behalf of the licence holder; secondly, the importance of accurate, complete and timely records.

With respect to the matter of persons acting on behalf of the licence holder, MPA is a company and accordingly must act through natural person agents. These persons are the officers (such as directors) and employees of the company. The Licence does not authorise persons to act “on behalf of” MPA, so MPA cannot authorise independent contractors or ‘lessees’ to carry out aquaculture. The MPA Company has been incorporated for some years and the directors can be assumed to understand relevant principles of agency.

For completeness, I intend to write to MPA as part of the decision-making process highlighting key aspects of ss 202, 203 and 204 of the Act.

The discussion in MPG 19 about the importance of accurate, complete and timely records refers to commercial fisheries and fishing boat operators. The activity authorised by the Licence does not relate to fishing and is therefore not relevant. What is important, however, is the requirement under regulation 64 of the *Fish Resources Management Regulations 1995* (“FRMR”) for the licence holder to keep records and submit returns in respect of the sale of fish and the accurate and timely communication of information relating to disease and biosecurity. Having regard to MPA’s history of submitting returns and the MEMP written by MPA and its previous reporting of fish escapes and mortalities, I consider the Company properly understands the significance of accurate, complete and timely provision of relevant information.

I am satisfied that MPA is fit and proper to hold a licence to conduct aquaculture of barramundi and the additional marine finfish species at the proposed new area.

(b) Tenure

S.92(1)(ba) requires the CEO to be satisfied that a person who has applied for an aquaculture licence has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted.

MPA has an existing Aquaculture Lease No. AL 20 (“the Lease”), granted under s.97 of the Act on 16 August 2011 for a period of 21 years over the area authorised by the current Licence.

Subject to the granting of the Licence variation to include the additional area, a new lease will be required for the additional area.

I understand MPA will make an application to the Minister seeking a lease for the area applied for in the variation.

The grant of a lease is a condition precedent to the grant of the licence variation.

(c) *Better interests*

S.92(1)(b) requires the CEO to be satisfied that the granting of an aquaculture licence to the applicant would be in the better interests of the State and the community.

I consider that the assessment of the ‘better interests of the State and the community’ requires a broad balancing of the benefits against the detriments of the intended aquaculture activities.

This consideration proceeds in the context of the objects of the Act under s.3, which include developing and managing aquaculture in a sustainable way.

The means of achieving this object include:

- ensuring that the impact of aquaculture on the aquatic fauna and their habitats is ecologically sustainable: s.3(2)(b);
- fostering the sustainable development of aquaculture: s.3(2)(d); and
- achieving the optimum economic, social and other benefits from the use of fish resources: s.3(2)(e).

Consistently with the objects of the Act, the WA Government’s support for aquaculture development is elaborated in its August 2015 Statement of Commitment, available at:

http://www.fish.wa.gov.au/Documents/Aquaculture/aquaculture_statement_of_commitment.pdf

In my view, the issues to consider in respect of the “better interests of the State” relate primarily to positive economic impacts, but also the extent of the regulatory burden that the State will need to carry.

The issues to consider in respect of the “better interests of the community” are more localised although not necessarily limited to the geographically adjacent area. The community will include wild-stock licensed fishers and licence holders.

The culture of barramundi and other marine finfish comprises a potentially significant and sustainable sector of Western Australia’s aquaculture industry and has the potential to expand. Aquaculture activities provide a significant contribution to economies and food production throughout the world. Aquaculture activities also provide potential growth areas of food production compared to the traditional “fishing of wild stock” activities which are directly extractive of a natural resource.

Sustainable aquaculture projects therefore have the potential to make a significant contribution to the State’s economy and provide community benefits such as employment opportunities and economic diversification in regional areas.

In respect of economic development, I have also noted that the Kimberley Development Commission has expressed support for aquaculture development in the region through its Regional Development Blueprint: *2036 and beyond: a regional blueprint for the Kimberley*, which identifies aquaculture as a priority and:

- in respect of infrastructure, proposes to “accelerate the expansion of regional aquaculture” and “facilitate development of aquaculture precincts where land and water resources are available in commercial proximity”; and
- in respect of services, proposes to develop the regional core aquaculture skills base to supply labour.

Another benefit is that the proposed activities will provide further experience and scientific information that can assist with future aquaculture proposals. The development of science depends upon ongoing activities to provide information for analysis.

With respect to detriments such as disease and impact on the economic environment, I consider that these are sufficiently considered below in relation to whether the proposed activities “are unlikely to adversely affect other fish or the environment”. To the extent that fish health certificates and other disease testing are required, being a major element of the biosecurity controls, these are generally to be paid for by MPA.

A consideration which may be seen as a “detriment” is if the Department assumes an unduly onerous regulatory burden. The Department performs a compliance function, to ensure that people comply with the law, in particular licence holders.

Due to the low risk and because the Department must support activities consistent with the objects of the Act, I do not consider that the regulatory burden constitutes a persuasive factor against concluding that the proposed activities are in the better interests of the State.

Another relevant consideration would be whether the proposed waters of operation would be better applied to another use, thereby serving the “better interests” of the State and the community to a greater extent. For example, if an alternative use of the proposed area delivered far greater economic benefits than that may be a reason supporting a conclusion that it is not in the better interests to authorise aquaculture of barramundi. These matters are not relevant in this case because the waters the subject of the variation are within the KADZ and the purpose of the KADZ is specifically marine finfish aquaculture.

On balance, by reason of the above considerations I am of the view that the grant of the application would be in the better interests of the State and community.

(d) Whether the proposed activities are unlikely to adversely affect other fish or the aquatic environment

S.92(1)(c) requires the CEO to be satisfied that the proposed aquaculture activities are unlikely to adversely affect other fish or the aquatic environment.

The main considerations for this criterion are –

1. Disease and pests
2. Genetics and interbreeding
3. Aquaculture gear
4. Environmental impact
5. Visual amenity and noise pollution.

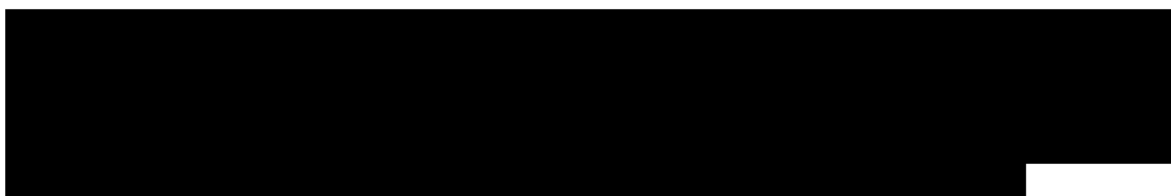
1. Disease and pests

I do not consider the introduction of “pests” to be an issue because the proposed operations do not involve introducing seawater from exotic locations to the area or the introduction of any species other than barramundi and other native finfish species to the water; therefore, the main consideration is the risk of disease.

With respect to disease, there are two scenarios to consider: firstly, that disease may be introduced into the natural environment through barramundi that may be carrying the disease; secondly, that a disease outbreak may occur in the barramundi at the aquaculture site, caused by the conditions at the site.

a. Disease introduction

The accidental introduction of disease pathogens into Western Australia through the translocation of fishes can be a major concern, particularly in view of the State’s relative freedom from disease. Adequate health testing and certification are consequently an essential element of any translocation policy.



I am aware that hatchery-reared barramundi have been moved to the MPA farm in Cone Bay for at least the past seven years under the methods outlined above and that over that period there have been no records of disease outbreaks or of disease being introduced from farmed animals into natural populations.

I consider the threat of disease being introduced to Cone Bay and the surrounding areas generally to be low, given the biosecurity protocols in place and the controls imposed, or that may be imposed, over the movement of the fish to and from the site.

b. Disease development in situ

I have noted that barramundi aquaculture has been carried out at the existing site in Cone Bay for over seven years. In that time, there have been no reported disease incidents.

I am also mindful of the disease management requirements set out in the Management Policy, which include disease incident reporting requirements. The Management Policy forms part of the MEMP, compliance with which is a requirement under the Act.

2. Genetics and interbreeding

FMP 159 considers matters related to genetics and interbreeding for barramundi aquaculture and stock enhancement and notes that barramundi translocated for aquaculture purposes will usually be genetically different from natural populations; however, farmed fish are normally contained within sea cages where the chances of escape can be controlled and minimised. Methods for preventing or minimizing escapes include the use of a separate predator net and, or, the use of mesh resistant to predators.

FMP 159 acknowledges there may be a minimal degree of risk in allowing the translocation of what may be a different genetic stock; however, this risk must be balanced against the significant economic and social benefits that would ensue from the establishment of a barramundi farming sector in regional Western Australia.

Therefore, I consider the likelihood of escapes can be prevented or minimised through the imposition of licence conditions requiring maintenance of aquaculture gear. The risk of interbreeding of hatchery-reared barramundi and wild stocks is acceptable and unlikely to have any detrimental impact.

3. Aquaculture gear

There are two aspects to the consideration of the effect of aquaculture gear on other fish or the environment: its physical and spatial impact on benthic habitats (that is, its “footprint”); and failure to remove the aquaculture gear if the aquaculture operation ceases. The environmental impact of the aquaculture activity on benthic habitats and water quality is a separate issue that is dealt with below.

a. Impact of the aquaculture gear

The proposed production system being used at the site comprises floating sea cages deployed in a grid suspended above the sea bed. The only component of the aquaculture gear on or in the sea bed is the anchoring system. The anchoring system is positioned to avoid any contact with reefs or identified sensitive benthic habitats.

Therefore, I consider that there would be minimal environmental impact arising from the use of the described aquaculture gear.

b. Removal of the aquaculture gear

The proposed aquaculture activity involves introducing a series of sea cages and associated infrastructure. Generally, a financial security in the form of a bond or bank guarantee is provided by a licence or lease holder to provide for clean-up and rehabilitation of aquaculture sites in the event of a cessation of aquaculture activity.

In this case, the matter of a financial security is addressed in the lease.

If a lease is terminated or expires, s.101 of the Act also provides for the CEO to direct the former lease holder to clean up and rehabilitate the site; if the former lease holder contravenes that direction, the CEO may then clean up the site and seek to recover the cost of doing so from the former lease holder (assuming the former lease holder is solvent).

One option to provide for the possible removal of aquaculture gear is to require MPA to provide a financial security through a bond or bank guarantee for an amount sufficient to cover the entire estimated cost of cleaning up and rehabilitating the site if the business ceases to operate. I consider it unreasonable to require such a bond or bank guarantee to cover the entire area at the outset, since the requirement for such a guarantee may significantly impact upon the development of the business.

The intended security for the removal of the aquaculture gear therefore should be a bank guarantee, which would be given effect through the lease deed and with the quantum increasing over time and in line with MPA's aquaculture development plan.

I have also noted that Section 6 of the KADZ Environmental Monitoring and Management Plan ("EMMP") provides a decommissioning plan in the event the operation is discontinued.

Therefore, I consider that there is minimal risk of the aquaculture gear being left on the site if the aquaculture operation ceases, as long as the lease deed requires the provision of a bank guarantee. I intend to advise the Minister of this as part of the Minister's consideration of the application for a lease over the relevant area.

4. Environmental impact

I note at the outset that it is in the best commercial interest of MPA to maintain a healthy environment and to ensure any ongoing environmental impact is properly measured and evaluated. The monitoring and management of environmental factors is a separate issue that is dealt with in the MEMP section below.

The Strategic Proposal to create the KADZ identified three key environmental factors:

- benthic communities and habitat;
- marine environmental quality; and
- marine fauna.

The assessment of these factors, including their potential impact, proposed mitigation and management measures and predicted outcomes, is provided in detail in the API Document, which the Department developed through the strategic assessment process for the KADZ.

I have read the API Document and, in respect of benthic habitats and water quality factors, noted the conclusion that the establishment of marine finfish aquaculture in the KADZ is not expected to cause any significant environmental impact, due to the:

- physical features of the area and the high rates of tidal water exchange that are sufficient to dilute and disperse nutrients before they are assimilated by the ecosystem; and
- adaptive management controls the Department has developed for the KADZ and the aquaculture operations that may be located within it.

In respect of marine fauna, I have noted that Cone Bay is not recognised for a particular ecological value for significant marine fauna and it is not used by migrating or nursing whales and does not have any known turtle rookeries; consequently, the diversity, distribution and viability of fauna is not predicted to have any significant impact as a result of aquaculture activity.

Therefore, I consider that the matter of environmental impact has been fully addressed in the API document and sufficient environmental monitoring and management controls provided in the EMMP.

5. Visual amenity and noise pollution

I have noted the position in the API Document that, due in part to the remote location of the site, the proposed project will not have any negative impact on visual amenity and will not result in any noise pollution.

After considering the relevant issues regarding s.92(1)(c), I am satisfied the proposed activities are unlikely to affect other fish or the aquatic environment and can be managed through the MEMP and conditions imposed on the licence under s.95 of the Act.

(e) Whether the proposed activities have been approved by other relevant authorities

S.92(1)(d) requires the CEO to be satisfied that the proposed activities have been approved by relevant authorities. I have not identified any other relevant authority that needs to provide approval.

(f) Other matters prescribed

S.92(1)(e) requires the CEO to be satisfied of any other matters prescribed for the purposes of s.92(1). There are no other prescribed matters.

Therefore, I am satisfied of all of the criteria in s.92(1) of the Act, in respect of the variation application.

3.2 The MEMP

Section 92A of the Act requires an applicant to lodge a MEMP when lodging an application for an aquaculture licence.

A MEMP forms part of an integrated management framework for aquaculture activities, which also includes relevant legislative requirements (including the FRMR and the *Biosecurity and Agriculture Management Act 2007*) as well as conditions on licences and leases.

The purpose of a MEMP is to satisfy the CEO that any risks to the environment and public safety will be managed per s.92A(1) of the Act. A MEMP provides information on the background and purpose of the aquaculture activity, including its objectives. Among other information such as the species of fish to be farmed, the location of the site and the farming method, the MEMP provides details of environmental monitoring and management and biosecurity.

The MEMP Guidance Statement is at:

http://www.fish.wa.gov.au/Documents/Aquaculture/memp_guidance_statement.pdf

With reference to the provisions of s.92A of the Act and the Guidance Statement, I note that MEMPs generally contain requirements in respect of the following.

1. An overview of the aquaculture operation, including information on species and quantity of fish; location and areas of land or waters; and farming methods and aquaculture gear.
2. Environmental Management and Monitoring, including information on and details of baseline information; environmental monitoring parameters; the environmental monitoring program; and response thresholds and response protocols.

3. Impact on protected species and other aquatic fauna.
4. Biosecurity, including information on and details of general facility information; administrative biosecurity procedures; operational biosecurity procedures; and biosecurity incident and emergency procedures.

In respect of aquaculture activity within an aquaculture development zone, the MEMP expressly includes the:

- MEMP document;
- Ministerial Statement or Notice issued by the Minister for Environment;
- Department of Fisheries EMMP for the zone; and
- Department of Fisheries Management Policy for the zone.

MPA has submitted a MEMP in respect of its existing licence. That MEMP has been amended so that it can also apply to the proposed operations.

In respect of the public availability of the MEMP, I note that under s.250(1)(c) of the Act, a MEMP lodged under the Act is “confidential information” and cannot be divulged by the Department.

4 DISCRETION TO VARY – MERITS OF THE APPLICATION

Section 142(1)(a) of the Act provides that an authorisation may be varied where the holder of the authorisation has applied for the variation.

I am satisfied that the power to vary MPA’s Licence exists in this case.

S.56 of the *Interpretation Act 1984* provides that where the word “may” is used in conferring a power, then the word shall, unless the contrary intention appears in the Act, be interpreted to imply that the power may be exercised or not, at discretion.

I do not consider a “contrary intention” exists in the Act. Accordingly, I am required to consider whether to exercise the power or not, at discretion.

In considering the exercise of discretion I give regard to the merits of the application. That requires balancing the opposing considerations against the supporting considerations. For any detrimental factors, I give regard to how detriments may be minimised and controlled.

4.1 Potential disadvantages of variation

The potential disadvantages of the proposed variation are:

- (a) Biosecurity (genetics and disease risk)
- (b) Environmental impact
- (c) Impact on compliance and resourcing

- (d) Limitation on access to the proposed waters
- (e) Impact on navigation
- (f) Impact on recreational fishing
- (g) Impact on commercial fishing and other commercial activities including tourism

(a) Biosecurity

I have considered the issue of genetics earlier at part 3.1(d)(1) of this decision, including interbreeding, and concluded genetics issues will be unlikely to have any detrimental impact.

The potential consequences of a disease outbreak include possibly serious economic impacts on the wild-stock and recreational fishers, as well as a consequential impact on the aquatic ecosystem generally; there is unlikely to be any potential impact on the pearling sector or other aquaculture licence holders.

Once present in the water column and under suitable conditions, disease-causing organisms have the ability to spread; therefore, if a disease outbreak occurs and pathogens are released into the water, it is generally difficult to control or treat the disease, which generally has to run its natural course. Biosecurity controls are therefore needed to prevent the introduction of pathogens into the environment and to minimise the risk of diseases developing at the site by not permitting operations to be conducted so as to predispose organisms on the site to develop disease (so preventing or minimising predisposing factors).

I have considered the issue of disease introduction earlier at part 3.1(d)(2) of this decision and concluded sufficient controls will be in place and so that this issue will be unlikely to have any detrimental impact.

There can also be a requirement for disease testing on stock held in the marine farm. This approach ensures a high level of confidence in the ability to detect known disease agents.

I am aware that there have been no reported disease events in the barramundi grown at the MPA farm in Cone Bay. I note that from time to time the Principal Research Scientist Fish Health may wish to undertake disease testing in the absence of a reported disease event and that these requirements may change from time to time, taking into account the diseases of interest, the characteristics of the tests available and the required confidence in the result as determined by risk assessment. A licence condition will be imposed to enable the Principal Research Scientist Fish Health to determine these requirements for disease testing.

Given the biosecurity protocols in place for the ACAAR facility and the controls imposed, or that may be imposed, over the movement of the barramundi, I consider the threat of disease being introduced to Cone Bay is low.

In respect of the other marine finfish species to be added to the Licence, I note that any movements to the site will require a translocation authorisation, which

would deal with matters including disease. I consider the threat of disease being introduced to Cone Bay by the marine finfish species added to the Licence is low.

I have noted that, in respect of disease developing at the marine farm, the key mitigation and management strategies preventing disease outbreak are set out in the “Zone Biosecurity” section of the Management Policy. These biosecurity procedures must include (but are not limited to):

- record keeping (such as translocation approvals, health certificates, disease management records, fish escape reports, unusual mortality reports, internal and external stock transfers, facility and stock inspections, facility access records for staff and visitors);
- routine maintenance, disinfection and inspections of aquaculture gear and vessels;
- biosecurity emergency procedures;
- disposal of waste (such as dead fish, diseased, contaminated or infected fish stocks);
- disease testing protocols and quarantine; and
- management of fish escapes.

The Management Policy outlines disease management strategies that will be implemented to minimise the risk of a fish disease outbreak. The Management Policy provides that, in addition to the procedures and protocols outlined in individual MEMPs, licence holders must comply with minimum requirements that include:

- fish stocked being of a species that occurs naturally within the Pilbara and Kimberley Region (a condition of the Ministerial Statement);
- the requirement for all stock to be certified disease-free and accompanied by a health certificate issued by the Department before being moved into the zone;
- a stock health surveillance program and quarantine procedures being implemented; and
- an appointed biosecurity manager being for ensuring biosecurity measures are implemented.

I have also noted the Management Policy sets out actions the licence holder must take in the event of a disease outbreak, in addition to the disease reporting requirements that are stipulated in the FRMR; namely, r.69(d), (e), (f), (g) and (h).

I have given consideration to the disease management strategies outlined in the Management Policy, in addition to the other controls that are in place, and concluded that the risk of introduction of disease to the site, and the risk of disease outbreak at the site, is low.

Finally, in respect of biosecurity, I have noted that any suspected escape of a significant number of fish (more than 100) from aquaculture gear, or circumstances that may give rise to a significant risk of escape, must be reported to the Department within 24 hours. This will be imposed as a condition on the varied licence.

To address the risk of disease development *in situ*, additional testing of barramundi at the farm site in Cone Bay can be required through a licence condition.

In summary, I have noted the issue cannot be about eliminating all risk; otherwise, aquaculture operations in the marine environment would not be able to proceed. That is contrary to the object and operation of the Act. The task, therefore, is to reduce the risk of disease outbreak to an appropriately low level by identifying and assessing biosecurity, environmental and other risks and implementing management strategies and controls to reduce the risks. This is addressed primarily through biosecurity controls implemented through the Management Policy and licence conditions.

(b) Environmental impact

The strategic environmental impact assessment process for the KADZ involved a comprehensive analysis of baseline environmental data, extensive field studies and environmental modelling. In addition to significantly enhancing the scientific understanding of the Kimberley marine environment, these studies concluded that the proposed aquaculture activity in the KADZ will not have any significant impact on the environment.

The baseline data obtained from the studies, together with the EMMP and the Management Policy, will ensure any impacts that may occur will be managed effectively.

Given the range of production scenarios modelled across the zone, I am of the view that any future aquaculture proposals could be implemented without significant deleterious impacts on the environment. Existing aquaculture legislation and adaptive management mechanisms provide further endorsement that the aquaculture industry can be developed sustainably.

Given the information set out above, I am of the view there are sufficient controls in place to manage any environmental impact

(c) Impact on compliance and resourcing

I note that licence conditions are generally designed to facilitate efficient and effective enforcement activities and that disease testing of cultured stock is generally the financial responsibility of the operators. Therefore, I do not consider that compliance activities undertaken to enforce the varied licence conditions in this case will be unduly onerous, as they should fall within the usual activities of the Department.

(d) Whether the proposal involves limitation on access to the proposed waters.

An aquaculture licence does not provide the licence holder with exclusive access to the site; therefore, extending authority under the Licence to include aquaculture at the additional area will not limit access to waters.

(e) The possible impact on navigation

The Department referred the proposal to the Department of Transport (Marine Safety), which recommended the areas of the site be subject to marking and lighting in accordance with Category 4 as set out in the document *Guidance Statement for Evaluating and Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/Licences (2010)*. This can be dealt with under a standard licence condition.

(f) The possible impact on recreational fishing

The granting of an aquaculture licence to conduct aquaculture activities at a certain area does not of itself confer any exclusive access to the area. Recreational fishing could still be carried out in the area where aquaculture is carried out.

(g) The possible impact on commercial fishing and other commercial activities including tourism

As with recreational fishing, the granting of an aquaculture licence to conduct aquaculture activities at a certain area does not of itself confer any exclusive access to the area. Commercial fishing could still be carried out in the area where aquaculture is carried out.

During the consultation process described in section 3 above, an issue was raised on the presence of algae in King Sound and a reduction in populations of various species, including barramundi. The algae issue was investigated, but the results were inconclusive and the cause of the algae, thought to be a cyanobacterium, was unknown. There is also no evidence of a decline in the populations of barramundi and the other species mentioned in the relevant area.

In the event of conflict arising between commercial fishing and aquaculture, then consideration may need to be given in the future to managing that conflict; however, such conflict is unlikely in the KADZ.

4.2 Potential advantages of variation

The potential advantages of the proposed variation are:

1. Suitability of the location for aquaculture and proximity to existing operation
2. Very low impact on other users of the resource
3. Potential economic benefits for the State
4. Contribution to ongoing development of science and knowledge of aquaculture
5. No impact on native title

(a) Suitability of the location for aquaculture and proximity to existing operation

Correct site selection is the single most important factor that determines the success of aquaculture ventures. The history of successful barramundi aquaculture undertaken by MPA at its existing site in Cone Bay indicates the suitability of the site for aquaculture. In its application, MPA has provided justification for the additional area applied for under the variation and confirmed its need to expand its current operation to make the venture commercially viable.

There are numerous reasons why the site provides a good location for the proposed activity and specifically, I have noted the following factors in respect of the location of the site:

- the physical features of the site satisfy the biological requirements for barramundi aquaculture;
- although located in a relatively remote area, the Cone Bay site has reasonable access to infrastructure in the town of Derby;
- the anchoring system used to deploy the sea cages used for grow-out would be located on muddy and sandy sea bed, not on sensitive benthic habitats;
- [REDACTED]
- the sea cages would only occupy an area equivalent to approximately 1% of the proposed lease area and the Moderate Ecological Protection Area ("MEPA") that surrounds each group of sea cages will occupy a maximum of 33.3 per cent (one third) of the lease area at any time;
- [REDACTED]
- the area is remote from major rivers and hence not prone to impacts from flood events, reducing the potential for stress and ensuing mortalities;
- the site is reasonably well sheltered from prevailing winds and offers some protection from open ocean swell and, importantly, is one of the few sites reasonably close to a town of some size in the Kimberley region that affords some degree of protection from tropical storms; and
- the proximity of the additional area to the existing area provides an added advantage in respect of operational efficiency and compliance activity.

I am of the view the reasons set out above show that the location is suitable for aquaculture, particularly barramundi aquaculture, and that the addition of the new area to the existing site would afford significant advantages in respect of operational efficiency and economies of scale.

(b) Very low impact on other users of the resource (providing disease issues are dealt with)

The granting of an aquaculture licence over an area of water does not confer any exclusivity over that area to the licence holder; other users, including commercial and recreational fishers, may still have unimpeded access to the area.

The proposal has no impact on visual amenity and there is no potential noise pollution.

I have read the API Document and noted that the proposal was developed in consultation with a range of stakeholders including indigenous groups, environmental and conservation organisations and Local and State Government authorities. In particular, consideration was given to the WA Government's "Kimberley Science and Conservation Strategy", which was developed to ensure the region's natural and cultural values are protected as the region fulfils its economic potential.

Providing that disease issues are dealt with, I have formed the view that the proposal will have little to no impact on other users of the resource.

(c) Potential economic benefits for the State

The establishment of aquaculture operations in regional areas has the potential to add to the economic growth of the region and increase local employment. Existing aquaculture farms around the State are already providing employment opportunities.

[REDACTED]

I have considered the issue of economic benefits for the State earlier at part 3.1(c) of this decision.

(d) Contribution to ongoing development of science and knowledge of aquaculture

Information generated from the expansion of aquaculture activities at the site would contribute to the ongoing development of the science and knowledge about aquaculture, in part by providing data pertaining to environmental impact of activities of this nature on the key identified environmental factors at this type of

site; namely, benthic communities and habitat, marine environmental quality and marine fauna.

The science developed from the proposal would not only increase the efficiency of the commercial activity, but also provide a basis for adaptive management by the Department.

(e) No impact on native title

The KADZ is located within the boundaries of two Native Title claims: the Dambimangari and the Mayala. The Dambimangari Native Title claim was determined by the Federal Court of Australia on 26 May 2011, while the Mayala claim was registered with the National Native Title Tribunal on 15 June 1999. The Mayala Native Title claim has yet to be determined by the Federal Court.

Representatives of both these Native Title claimants were consulted and involved in the development of the KADZ. To date, no significant issues relating to the implementation or on-going management of the zone have been raised by these Native Title claimants with the Department of Fisheries.

The Dambimangari and the Mayala Native Title claims respect the validly granted rights and interests of the holders of aquaculture licences and leases granted under the Act and are not in conflict with those rights and interests. Consequently, this application to vary an aquaculture licence has no impact on Native Title.

In respect of the various issues opposing and in favour of the proposal, I am satisfied the benefits outweigh the disadvantages and that the risks, possible detriments and other issues associated with the proposed licence variation can be managed by licence conditions and the MEMP.

4.3 Other matters the CEO has the discretion to consider

I will now address four other matters aspects relating to the application; namely:

- (a) the principles the Department will use to assess applications for licence and leases within the KADZ, with reference to the creation of the KADZ under the *Environmental Protection Act 1986* ("EP Act");
- (b) the reduction in area available for lease as a consequence of the requirement for spatial separation between sites and a buffer between the lease and zone boundaries for biosecurity and environmental purposes;
- (c) the commercial viability of the proposed activity; and
- (d) productive use of the site.

(a) The principles the Department will use to assess applications for sites

The creation of the KADZ involved environmental assessment of the whole zone as a Strategic Proposal under Part IV of the EP Act. Approval of the Strategic Proposal enables existing and future aquaculture operators to refer project proposals to the Environmental Protection Authority as a Derived Proposal, thereby simplifying an otherwise protracted and costly process. This process greatly reduces the investment risk and cost of large-scale aquaculture in WA.

The Government does not propose to recover the cost of establishing the KADZ from current or future operators within it; however, it recognises the KADZ as a valuable resource established with public funding and consequently that the allocation of licences and leases within the KADZ must be made in accordance with the Act, subordinate legislation, and the Fisheries Occasional Publication 127 – *Aquaculture Zones in Western Australia – Policy Principles Relating to Considerations for Aquaculture Licence and Leases* (“FOP 127”).

FOP 127 identifies the matters and principles the Department will consider when assessing applications for licences and leases in a declared aquaculture development zone, including in the KADZ, and the process it will use to do so. The key principles are to ensure a transparent and equitable assessment process for applications; and that licences and leases are granted to persons who demonstrate they have the capacity and ability to achieve the optimum economic and social benefit from the resource in an environmentally sustainable manner. FOP 127 states that applications that meet the criteria set out in s.92(1) will then be further assessed on merit, and consideration will likely be given to matters such as business viability, business capability and biosecurity issues.

(b) The reduction in the area available for lease

Within the KADZ, under the *Kimberley Aquaculture Development Zone Management Policy 2015* (“Management Policy”):

- to ensure acceptable levels of ecological protection are met, new leases must have a buffer of 50 metres between the lease boundary and the zone boundary; and
- to reduce any potential biosecurity risks, the minimum spatial separation distance between leases owned by different companies or other legal entities is one kilometre.

The above requirements have the effect of reducing the overall area available for lease within the KADZ to less than 1,300 hectares, particularly where there is more than one operator and hence a requirement for a one-kilometre-wide spatial separation area in which no aquaculture will be permitted. I have before me two separate applications for sites in the KADZ. In total, the applications are seeking the full area available; these areas do not overlap but are adjoining. In this case, it is therefore reasonable for the one-kilometre-wide area required for spatial separation to be divided equally between the two areas.

MPA has applied for an additional area of 800 hectares. The application is therefore being assessed on the basis that the area available for use in the KADZ will be reduced, to accommodate half the spatial separation area required and the 50-metre buffer. The area being considered for the application is therefore 644 hectares. The boundaries of the site are provided in the map at Attachment 1.

The Ministerial Statement issued by the Minister for Environment approves the 2,000-hectare KADZ for a maximum production of 20,000 tonnes of fish per annum. There is no requirement for production to be distributed evenly across the entire area; in fact, production is restricted to a “floating” (i.e. moveable) Moderate Ecological Protection Area (“MEPA”) that occupies one-third of the lease area at any one time.

Further, environmental monitoring will ensure compliance with the environmental guidelines and standards applicable to the KADZ strategic approval; consequently, there is no reason why the approved production limit for the zone should be reduced as a result of a reasonably small reduction in the area of the zone actually available for lease.

Using this rationale, the lease area of 644 hectares may still be approved for the production of the quantity of fish applicable to an 800 hectare lease had the area not been reduced for biosecurity and ecological protection requirements.

As a result, subject to it meeting the relevant environmental guidelines and standards, the 644 hectare lease area will enable the production of 8,000 tonnes per annum and contribute to the combined area of 1,344 hectares on the licence being approved for a production of 15,000 tonnes per annum.

(c) The commercial viability of the proposed activity

The Department commissioned an independent financial consultant to undertake an analysis of the commercial viability of the business case presented by MPA in support of its application to vary its licence to include an additional area of water.



[REDACTED]

Based on its analysis of commercial viability, the consultant was not aware of any clearly definable reasons associated with commercial viability as to why MPA should not be awarded the full acreage that is the subject of its application.

I have also noted the consultant's recommendation that any "use-it-or-lose-it" conditions that may be imposed should give adequate consideration to, and accommodate the possibility that inherent risk and uncertainties associated with the scale-up project may result in project delays, [REDACTED].

(d) Productive use of the site

It is in the interests of the State for aquaculture sites to be productively used by the relevant licence or lease holder. As State waters are a community resource, it is also in the best interests of the community for aquaculture activities conducted in those waters to be used productively. This reflects the aim to achieve the optimum economic, social and other benefits from the use of fish resources under s.3(2)(e) of the Act.

As such, I have assessed the capability of the applicant, to ensure the most productive use of the site that will be authorised under the licence.

In respect of productive use of the site, I have considered the information MPA provided in its business plan and the assessment of commercial viability undertaken by an independent expert, a summary of which is set out in part 4.3(c) above.

I consider the productive use of the site for aquaculture activities to be a significant factor in my decision to vary the licence.

It is my intention to introduce reasonable performance criteria for this operation in the future, based on:

1. the representations made by MPA in its business plan; and
2. the State and community interest in ensuring the productive use of State waters.

The performance criteria would require the licence holder to show a trend of production growth in their operations, until the annual production reaches 80% of the total production allowed on the site.

On the basis of the representations from MPA, I am satisfied that the Company's use of the site will be productive.

It is my intention to advise the Minister that any future aquaculture lease for the site includes performance criteria to ensure productive use of the site occurs. I intend to recommend to the Minister that any such aquaculture lease provides for automatic variation of the lease to reduce the size of the site if the specified performance criteria are not met by the licence holder.

5 LICENCE CONDITIONS

My reasoning thus far has noted that certain matters can be satisfied if they are able to be dealt with by licence conditions. Accordingly, before deciding on the application to vary MPA's licence, I now turn my mind to conditions I consider ought to be imposed on the licence.

The matters for which conditions may be considered are as follows.

- Requirement for a lease

A lease will be required before aquaculture is conducted at the site to ensure issues such as the provision of a bank guarantee have been complied with.

- Aquaculture method and gear

Conditions in respect of aquaculture method and gear provide controls over the deployment of sea cages, the materials used in their manufacture and anchoring systems. These controls are set out in the Management Policy, compliance with which is a requirement of the MEMP.

- Land-based nursery aquaculture activities

Conditions are required in respect of waste water discharge related to land-based activities in the barramundi nursery located on Turtle Island. I note that, while the Licence authorises aquaculture on Turtle Island, tenure for the Island is afforded through a sub-lease.

- Health management and certification

Conditions dealing with health management and certification will minimise the risk of introduction of disease, by ensuring each group of fish moved to the site will be tested and certified free of signs of clinical disease.

A general condition will also be imposed requiring information on mortalities to be provided at the request of the Principal Research Scientist Fish Health.

- Biosecurity (including disease and genetics)

Conditions in respect of biosecurity include controls over record keeping, the source of broodstock, health management and certification, procedures to be

followed in the event of suspicion of disease, controls over the disposal of biological waste materials and the management of fish escapes.

As MPA would not have exclusive possession of the site and waters, an officer of the Fish Health Section of the Department or a Fisheries Management Officer can enter the site at any time to inspect stocks.

I note that with disease testing a balance needs to be struck between the benefit derived from testing against the cost of undertaking the testing. Repeated and routine testing of healthy stock is likely to be of low value, yet would require the licence holder to incur significant costs. On the other hand, targeted testing of dead or moribund barramundi will be likely to identify the presence of any disease-causing organisms. A level of routine testing should be undertaken on the recommendation of the Principal Research Scientist Fish Health.

As with any condition, if circumstances change then the requirement for testing can be changed.

- Marking and lighting
- Environmental monitoring

Conditions in respect of environmental monitoring and reporting are set out in the EMMP. Compliance with the EMMP is a requirement of the MEMP.

- Compliance issues

Conditions in respect of compliance issues provide controls over or requirements for making and keeping of records.

The power to delete and add new conditions is provided for in s.95 of the Act.

The Department has liaised with the Applicant over the licence conditions. The indicative (intended) substance of the licence conditions is as follows.

1. Interpretation

(1) In the conditions on this licence –

Fish Health Pathologist means an employee of a laboratory facility that is accredited by the National Association of Testing Authorities, Australia;

mean filter rating means the measurement of the average pore size of a filter element, being the particle size above which the filter starts to be effective;

Principal Research Scientist Fish Health means the officer occupying that position in the Department, or any officer occupying a comparable position in the Department that the CEO advises the licence holder by notice in writing will be performing the duties of the Principal Research Scientist Fish Health;

site means the area specified in Schedule 2 of this licence.

(2) The following terms used in the conditions on this licence have the same meaning as in the *Fish Resources Management Act 1994* –

- aquaculture lease;
- CEO;
- Department;
- record.

2. Requirement for aquaculture lease to authorise activity

(1) The licence holder must make every reasonable endeavour to obtain an aquaculture lease from the Minister for Fisheries in respect of the site before 31 December 2016.

(2) The licence holder must ensure that fish are not stocked or cultured at any area of the site unless the licence holder is authorised under an aquaculture lease to occupy or use that area of the site for aquaculture.

3. Use of sea cages

The licence holder must ensure that fish are cultured in floating sea cages either anchored to the sea bed or secured within a grid system anchored to the sea bed.

4. Aquaculture gear

The licence holder must ensure that all aquaculture gear used at the site, including sea cages, nets and grids, are maintained to meet the operational requirements set out in section 7.2 of the Department's *Kimberley Aquaculture Development Zone Management Policy* dated August 2015.

5. Treatment of wastewater

(1) The licence holder must ensure that wastewater discharged from the nursery area of the site is treated using ozonisation or filtered to a mean filter rating of 200 microns.

(2) Where, despite all reasonable endeavours, the filtration equipment described in paragraph (1) is inoperable, the licence holder must divert water to a soakage pit.

(3) The licence holder must make a record of any failure of filtration equipment.

- (4) If the soakage pit is flooded and untreated wastewater is discharged directly to the sea, the licence holder must make a record of the time and volume of water discharged.
- (5) The licence holder must submit copies of all records made under this condition to the Department within 30 days of the relevant event.

6. Source of stock

The licence holder must not source fish seed stocks from any hatchery facility unless that facility –

- (a) is located in Australia; and
- (b) is licensed in the relevant jurisdiction.

7. Inter-breeding and escapes

Where more than 100 fish escape from a sea cage within a 24 hour period, the licence holder must inform the Translocation Officer of the Department of the escape event within 24 hours of becoming aware of the escape event.

8. Movement of fish with approval

The licence holder must ensure that no fish are moved from the site without the prior written approval of the CEO, except where the fish are moved for the purpose of processing or sale for consumption.

9. Health management and certification

- (1) The licence holder must not move fish onto the site unless –
 - (a) the licence holder has submitted the request form provided by the Principal Research Scientist Fish Health to a Fish Health Pathologist for the provision of a health certificate; and
 - (b) the licence holder has received a health certificate from a Fish Health Pathologist in respect of all fish being moved to the site; and
 - (c) where the licence holder has made a request under subparagraph (a) to a Fish Health Pathologist that is not an officer of the Department, the licence holder has received confirmation from the Principal Research Scientist Fish Health that a copy of a health certificate for those fish is in the possession of the Principal Research Scientist Fish Health.
- (2) The licence holder must ensure that any fish moved to the site is accompanied at all times by a copy of the health certificate received under paragraph (1).

10. Disease testing

- (1) The licence holder must ensure that disease testing of fish is carried out –
- (a) during transport to or from the site; or
 - (b) while the fish is situated at the site,
- as required by notice in writing from the Principal Research Scientist Fish Health.
- (2) The testing carried out under paragraph (1) will be at the cost of the licence holder.

11. Biosecurity measures

- (1) In addition to the requirements under regulation 69 of the *Fish Resources Management Regulations 1995*, the licence holder must undertake the actions required at paragraph (2) where the licence holder –
- (a) suspects that any fish at the site are affected by disease; or
 - (b) becomes aware of any mortalities of fish at the site caused by, or potentially caused by, disease; or
 - (c) becomes aware of any signs of disease in fish at any part of the site.
- (2) Where any of the circumstances in paragraph (1) arise, the licence holder must –
- (a) immediately notify an officer of the Fish Health Section of the Department by telephone of the level of mortality or signs of disease; and
 - (b) confirm the notification given under subparagraph (a) by email to the officer of the Fish Health Section of the Department immediately after making the notification; and
 - (c) provide a written report detailing the facts and circumstances of the mortalities or signs of disease to the Principal Research Scientist Fish Health within 24 hours of giving a notification under subparagraph (a); and
 - (d) provide a written report detailing the facts and circumstances of the mortalities or signs of disease to the Translocation Officer of the Department within 24 hours of giving a notification under subparagraph (a).
- (3) The licence holder must provide –
- (a) samples of fish and other things in accordance with any directions and requirements of the Principal Research Scientist Fish Health; and
 - (b) a completed mortality declaration form provided by the Principal Research Scientist Fish Health,
- to the Principal Research Scientist Fish Health at such times as the Principal Research Scientist Fish Health requires.

12. Record keeping

- (1) The licence holder must make accurate and timely records of –
 - (a) the individual numbers of each of the sea cages used at the site;
 - (b) the movement of fish to each sea cage, including –
 - i. the number and average weight of the fish moved;
 - ii. the time and date the movement took place; and
 - iii. any mortalities of fish that occurred during the movement;
 - (c) the estimated number and weight of fish being kept in each sea cage at the site;
 - (d) the number and weight of fish harvested from each sea cage at the site;
 - (e) all mortalities at the site, both in total and as a percentage of total stock held at the site at the time; and
 - (f) all health certificates issued to the licence holder by a Fish Health Pathologist.
- (2) The licence holder must keep the records made under paragraph (1) in a secure place within the premises at the site for a period of seven years.

13. Providing information to Principal Research Scientist Fish Health

- (1) The licence holder must provide the data recorded under condition 12(1) to the Principal Research Scientist Fish Health in response to a request from the Principal Research Scientist Fish Health for such information.
- (2) The licence holder must provide the data requested under paragraph (1) in a form approved by the Principal Research Scientist Fish Health.

The conditions will be imposed by providing the Applicant with notice in writing, noting there is a requirement for a review period before giving effect to the decision.

I note that the aquaculture venture is a dynamic operation, not a static event, and in the event that varied or additional conditions become appropriate then those can be imposed in the future in accordance with the process in the Act.

DECISION

On the basis of the above, subject to the grant of a new aquaculture lease by the Minister discussed in part 3(1)(b) of this statement and subject to the grant of a Derived Proposal by the Minister for Environment under s.45A of the EP Act, I have decided to vary Aquaculture Licence No. 1465, issued to MPA, under s.142 of the Act, so as to include an additional 644 hectares on the authorised site within the KADZ in Cone Bay and change the list of species that can be cultured on the site. I have also decided the Licence will authorise the production of not more than 15,000 tonnes (whole weight) of the authorised marine finfish species over any 12-month period.

I have also decided to delete the existing conditions on the Licence and impose new conditions on the Licence under s.95 of the Act. The new conditions to be imposed are as set out above at part 5 of this statement of decision.



Darren Foster
DEPUTY DIRECTOR GENERAL
As delegate of the CEO

Dated this

24th day of May

2016

I hereby give instruction for notice of the decision to vary the Licence under s.142 of the Act and impose conditions under s.95 of the Act to be advertised in the West Australian newspaper in accordance with s.148 of the *Fish Resources Management Act 1994*.

CONE BAY MPA FISH FARMS PTY LTD AQUACULTURE LICENCE VARIATION APPLICATION - SITE PLAN

ALL THAT PORTION OF TERRITORIAL LAND & WATER WITHIN THE BOUNDARY DESCRIBED AND COLOURED GREEN ON THE PLAN BELOW COMPRISING A TOTAL AREA OF 644 HECTARES

