
Fisheries discussion paper

Marine farm planning
and consultation
processes in
Western Australia

compiled by
Dave Everall
Everall Consulting Biologist

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MARINE FARM PLANNING AND CONSULTATION PROCESSES IN WA
Report to the Fisheries Department of Western Australia

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EXECUTIVE SUMMARY

Introduction

The development of a sustainable aquaculture industry in Western Australia is considered to be a high priority by the Government. The marine farming industry has a bright future in Western Australia, but there is a need to balance its developing needs for suitable waters with those of existing activities, and with community expectations for accountability and transparency in the resolution of equity and resource sharing decisions.

The purpose of this report is to review the existing planning and consultation processes for pearling and aquaculture in WA and recommend how they may be improved and incorporated into a single process. It refers only to authorisations in marine waters, and does not deal with developments on land.

Consultations

All of the organisations listed in the Brief were invited to submit a written submission and/or to meet with the consultant to discuss issues. The persons and organisations that responded are listed in Appendix 2.

The planning and application assessment procedures for pearling and aquaculture in WA were reviewed and examples were analysed to assess where difficulties and impediments were likely to occur.

The planning and application assessment procedures used in Tasmania and South Australia were then examined to identify a suitable process which might provide a model for WA to consider. Planning and environmental processes in Western Australia were considered as examples of modern legislation with public consultation provisions that meet community expectations.

Summary of Conclusions

The following is a summary of the main conclusions from the various sections of the report.

Current Pearling and Aquaculture Application Processes

- 1 In statutory terms, the pearling and aquaculture assessment processes are very similar and could readily be dealt with as a single administrative process, without changing the legislation.
- 2 A single application process is not prevented by the different routing of pearling and aquaculture applications through to the Broome office of the Fisheries Department and the IDCA, because these are internal, non-statutory procedures of the Fisheries Department.

Planning and Application Procedures Used in Other States

- 3 The planning and assessment processes adopted in Tasmania and South Australia can not be applied directly to the Western Australian situation because the legislative and underlying structures are quite different. However, the methods used to ensure that transparency, accountability and consultation meet public expectations are similar to planning and environmental legislation in Western Australia.

Comparison of Local and Interstate Procedures for Public Consultation

- 4 The application procedures for pearling and aquaculture authorisations in Western Australia do not fare well in comparison with the other systems regarding public consultation. Application procedures for marine farming should have public consultation stages similar to the WAPC and EPA models.
- 5 The public need to be satisfied that applications will be dealt with in accordance with an established plan and policy framework. Where such a plan exists, simple application procedures with limited referral and public consultation are appropriate. Where there is no established plan, much more rigorous procedures are required in the application process to ensure public expectations for transparency and accountability are met.

Application of WAPC and EPA Procedures to Marine Farming Authorisations

- 6 The extension of statutory planning schemes to cover marine areas is not a viable option for processing marine farming applications, or for the resolution of resource sharing issues. The Fisheries Department should give priority to participation in regional planning studies, coastal plans and estuary planning studies, and their extension to cover offshore marine farming.
- 7 It would not be feasible to use the WAPC planning system as a clearing house for marine farming authorisations because most of the judgements and assessments required are mainly for the Fisheries Department.
- 8 The Fisheries Department should encourage applicants to include community consultation and research to meet EPA and its own requirements in their business planning as part of a new three step application process.

A Single Process for Marine Farming Authorisations

- 9 There appears to be no legal impediment to the introduction of a single application process for marine farming authorisations similar to the flow chart in Diagram 2.

- 10 New components of the process would be:
- an improved three-step pre-application procedure;
 - joint scoping of applications with the DEP;
 - public advertising of certain applications;
 - provision for those who made comment during the public advertising phase to request the Minister to review a proposed decision;
 - retention of objection provisions for affected persons.
- 11 A Ministerial Policy Guideline should be introduced to cover public consultation and advertising in application procedures and provide a means of meeting public expectations for transparency. As many of the suggested new measures are already part of the Fisheries Department's current practice, early introduction of the new system for testing prior to the introduction of legislation would be desirable.

ISSUES AND CONCLUSIONS

It is concluded that improvements are needed in public consultation by proponents and the Fisheries Department, and in the quality of information provided with applications. Equally, the process needs to be managed so that comment in submissions is focussed on matters of relevance to the expertise or interests of the provider, and that equity questions are properly addressed within an ecologically sustainable development framework.

To meet the demand for secure sites for future development, the Fisheries Department should undertake or sponsor the strategic planning of key areas, to include wide community consultation in order to fully address environmental, equity and resource sharing issues. To do this the Fisheries Department may need an improved legislative base, specifically, the power to undertake or fund broad planning studies. As there is a need for better technical information to underpin the existing knowledge base for planning, the Fisheries Department should use its substantial research capability to provide baseline data for planning.

RECOMMENDATIONS

It is recommended that;

- 1 Ministerial Policy Guidelines be prepared for the Executive Director's guidance on public consultation in application procedures. These may be issued pursuant to Section 246 of the *Fish Resources Management Act*, 1994 and Section 24 of the *Pearling Act*, 1990.
- 2 a new single application process for marine farming authorisations which includes public consultation procedures be adopted. It would be similar to the flow chart in Diagram 2.
- 3 to meet the demand for secure sites for future development, the Fisheries Department should undertake or sponsor the strategic planning of key areas, to include wide community consultation in order to fully address environmental, equity and resource sharing issues.

- 4 consideration be given to amending the legislation to provide the Fisheries Department with the power to undertake and fund broad planning studies.
- 5 the Fisheries Department should use its substantial research capability to provide baseline data for planning.

MARINE FARM PLANNING AND CONSULTATION PROCESSES

1 INTRODUCTION

1.1 Background

The development of a sustainable aquaculture industry in Western Australia is considered to be a high priority by the Government. In its policy paper on fisheries for the 1996 election, *Fishing for a Prosperous and Sustainable Future*, the Government announced fourteen further aquaculture development initiatives which included:

- *the allocation of a further \$8 Million towards aquaculture development in Western Australia. This is in addition to the Coalition's existing \$4.5 Million Aquaculture Development Initiative.*
- *a review of the Fisheries Department Aquaculture Program administrative arrangements, including the operations of the Inter-Departmental Committee on Aquaculture, to ensure clarification and streamlining of licences and leases application and approval processes, widespread consultation with industry and the general community in the selection of suitable lease sites; and the establishment of clear performance criteria attached to leases and licences.*

The purpose of this report is to review the existing planning and consultation processes for pearling and aquaculture in WA and recommend how they may be improved and incorporated into a single process. It refers only to authorisations in marine waters, and does not deal with developments on land.

1.2 Marine Farming and Resource Equity

Marine farming has been undertaken in coastal waters around Australia for many years, mainly for oysters and shellfish, but in the last ten years, in response to increased fishing pressure on wild fish stocks and to technology development in aquaculture overseas, there has been rapid growth in finfish and prawn farming. This growth has been accompanied by increasing public concern about equity in the planning and allocation of waters for aquaculture, and about the potential of the industry to cause environmental and visual pollution, and navigation conflicts. The public perception is that marine farming excludes other beneficial uses including conservation, recreational uses including fishing, and commercial fishing.

In Tasmania such concerns led to a moratorium on the granting of aquaculture sites and a complete legislative and administrative review of procedures, aimed principally at establishing equitable coastal planning and community consultation processes. In South Australia, similar reforms followed difficulties in the management of the tuna growing out industry.

In Western Australia, rapid growth in aquaculture and pearling in recent years has led to similar community concern, with conflict occurring between recreation, fishing and aquaculture interests competing for resources and water allocation (BSD 1997). In the Dampier Archipelago competition between industry, recreation and conservation interests, coupled with a dearth of suitable water for pearling and aquaculture proposals led to calls for detailed planning of the area's waters, greater community input to planning and lease proposals, and for clarification of the Fisheries Department's procedures for dealing with applications (Driscoll 1996), (Fraser 1996).

1.3 Applications for Leases and Licences

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 always meet public expectations on reporting or objection 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.

The present processes 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 consultees. The notification, objection and appeal processes are generally limited to applicants, existing lessees, licence holders and people within the industries.

Marine farming proposals on land and in marine areas are dealt with differently because land developments are subject to development approval procedures under the *Town Planning and Development Act*, 1928-1986, which does not apply to marine areas. This paper deals only with marine farming issues.

The Fisheries Department wishes to move towards proactive planning and application procedures which involve wide community consultation, so that equity issues can be addressed in the early stages, and any environmental issues can be identified and resolved before applications reach an advanced stage.

As aquaculture is a relatively new primary industry attempting to compete for resources against established industries and uses, it is probable that controversy will accompany many new proposals. The introduction of transparent planning, community consultation, reporting and objection processes which meet public expectations on matters of public interest will enable these discussions to be conducted in an atmosphere of trust.

1.4 The Study Brief

The brief for the study is at Appendix 1. The purpose of the study is to:

- Review the existing planning and consultation processes for pearling and aquaculture in WA and recommend how they may be improved and incorporated into a single process;
- Advise on an appropriate mechanism for incorporating the requirements of the aquaculture industry into the marine park planning process.

Principal Tasks:

- Invite written submissions or meet with interested groups,
- Workshop with officers of the Fisheries Department to identify issues,
- Review the existing pearling and aquaculture planning and consultation processes,
- Review the planning processes which apply in South Australia and Tasmania,
- Consider the procedures adopted by the Western Australian Planning Commission when determining proposals pursuant to the *Town Planning and Development Act, 1928-1986* and the *Metropolitan Region Town Planning Scheme Act, 1959*,
- Consider the procedures adopted by the Environmental Protection Authority (EPA) when assessing the possible environmental impact of proposals.

1.5 Methodology

The task of reviewing the existing planning and consultation processes is seen as surveying, describing and examining critically these processes with a view to assessing their effectiveness in terms of their ability to meet both community and industry needs and expectations.

The effectiveness of the processes can be established by their level of acceptance in meeting industry needs while considering the needs of other users and meeting the community's expectations of equity and accountability in the allocation and use of resources, and conservation of these resources and the environment in general.

All of the organisations listed in the Brief (Appendix 1) were invited to submit a written submission and/or to meet with the consultant to discuss issues. Meetings of the Aquaculture Development Council (ADC) and the Inter-Departmental Committee for Aquaculture (IDCA) were attended and consultations were held with several individuals and representatives of stakeholders. A workshop was held with officers of the Fisheries Department to identify issues. Appendix 2 contains a list of those interested parties who either made submissions or were interviewed.

The planning and application assessment procedures for pearling and aquaculture in WA were reviewed and examples were analysed to assess where difficulties and impediments were likely to occur. Advice was sought from all respondents to elicit their views on any shortcomings of the processes and how they might be improved. The planning and application assessment procedures used in other States and by other WA agencies were examined to identify a suitable process which might provide a model for WA to consider.

2 CURRENT POSITION

2.1 Pearling and Aquaculture Application Processes

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, whereas aquaculture, which includes all other species of pearl oyster (referred to as non-*P. 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:

- Aquaculture applications, which include finfish, shellfish and non-*P. maxima* pearls, are processed via the Inter-Departmental Committee on Aquaculture (IDCA) and the Executive Director of the Fisheries Department.
- Pearling applications for *Pinctada maxima* pearls, are processed via the Broome office of the Fisheries Department and the Executive Director.

Under the *Fish Resources Management Act*, 1994 the Executive Director of the Fisheries Department may grant aquaculture licenses having been 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.

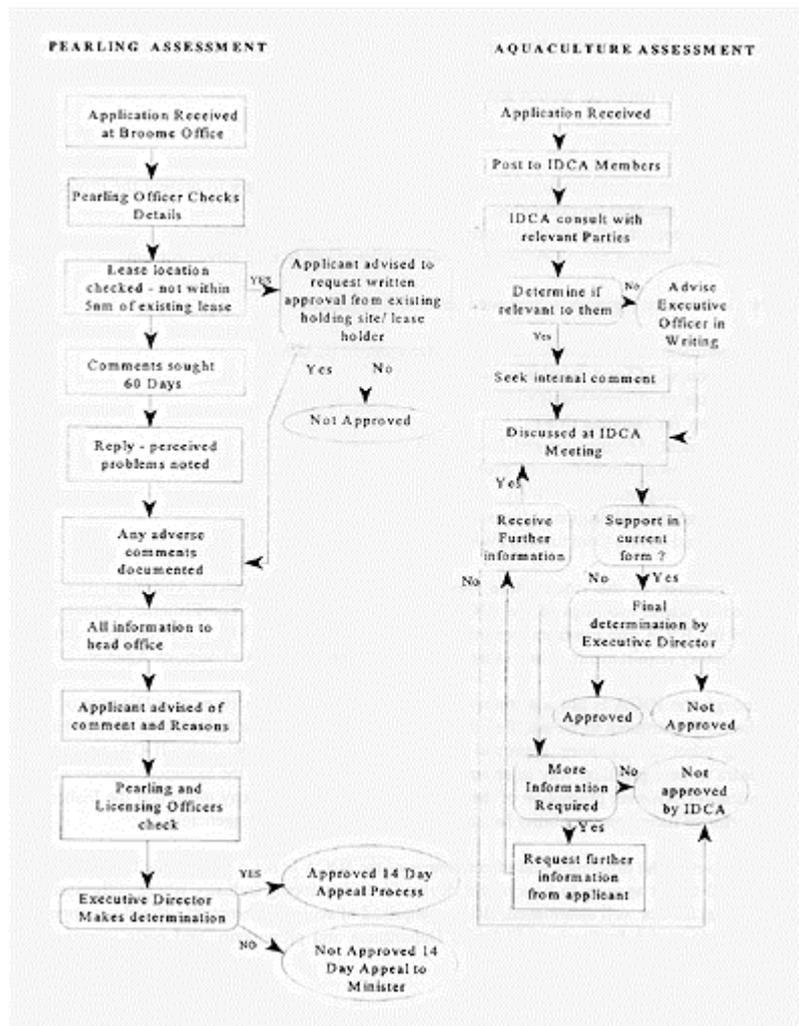
Aquaculture leases can be granted by the Minister for Fisheries though no leases have been granted to date. The Minister must publish notice of the grant of a lease in the *Gazette*. There is no right of objection or appeal for the public.

The Executive Director of the Fisheries Department may grant authorisations under the *Pearling Act*, 1990. 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.

The Fisheries Department refers aquaculture and pearl farm lease applications to the relevant Shire Councils, interest groups and Recreational Fishing Advisory Committee for comment and advice. Proposals can also be referred to the Environmental Protection Authority (EPA) for environmental impact assessment which can be either an informal or formal process under the *Environmental Protection Act*, 1986.

A flow chart showing the existing pearling and aquaculture application assessment processes is at Diagram 1.

Diagram 1 Existing Marine Farming Processes



2.2 Inter-Departmental Committee for Aquaculture (IDCA)

The IDCA was established by Cabinet in 1986 to co-ordinate Government's handling of aquaculture proposals from evaluation to approval and then through implementation and monitoring. This process allows proponents to submit a single application and receive coordinated responses from the range of Government Authorities that may be involved. The IDCA's role is limited to marine and Crown Land applications.

Specifically the IDCA:

- ensures that proponents have access to the information necessary to present the project in the detail required for evaluation;
- arranges consideration of the proposal by the most appropriate Agency/ies; and
- where possible or necessary, arranges on-site inspections to help solve problems.

The Government Agencies represented on the IDCA include:

- Department of Conservation and Land Management (CALM)
- Department of Land Administration (DOLA)
- Department of Transport (DOT)
- Ministry for Planning (MFP)
- Department of Commerce and Trade (DCT)
- Department of Environmental Protection (DEP)
- Fisheries Department (FDWA)
- Department of Aboriginal Affairs (DAA)
- Water and Rivers Commission (WRC)

The Chairman of the Aquaculture Development Council of Western Australia (ADC) is invited to attend meetings of the IDCA in an observer capacity. The Fisheries Department chairs the IDCA and provides executive and secretarial support. The IDCA cannot override the statutory requirements of any other Government Department, Authority, or Agency.

Although the IDCA is not a statutory body, the Act requires the Executive Director of the Fisheries Department to be satisfied that the activities to be conducted under a licence have, among other things, been approved by other relevant authorities. The IDCA procedure appears to be a practical way to ensure this and obtain advice on the technical aspects of an application, however promotion of the IDCA as a clearing house may mean that the Fisheries Department incurs responsibility for any delays caused by member agencies.

Evaluation of the efficiency and effectiveness of the IDCA is not a part of this brief, but it is observed that it appears to be a useful device for a developing industry where authorisation processes are not well established. Being comprised of senior government officials, it appears to provide useful feedback to Fisheries Department and proponents, and early warning of problems in applications.

2.3 Pre-application Procedures

The Fisheries Department provides a detailed information pack to prospective applicants for aquaculture authorisations. Aquaculture Development Officers advise and assist applicants and provide relevant reports and literature. Information accompanying the application form details the information required to complete the application. The EPA has a similar information pack. The information required to support an application is extensive and in some cases may require a proponent to undertake significant research, including on site trials.

The retrieval chart at Table 1 summarises the information requirements for aquaculture and its relevance to member agencies of the IDCA. Information requirements and referrals are similar for pearling authorisations. The chart shows the more important and intensive assessments as shaded areas. It may be inferred from the retrieval chart that the majority and weight of assessments falls to the Fisheries Department and be concluded that the Fisheries Department is not merely a clearing house for referrals but the central assessment agency.

The criteria chosen for sufficiency of information required to support applications is that sufficiency is best judged by the users of that information. The views of agencies and groups which made submissions are summarised in Section 3. During the preparation of this report, CALM and DEP, as well as other members of IDCA, provided detailed advice to Fisheries Department of their information requirements and statutory responsibilities.

Potential areas of improvement in the pre-application procedures are:

- public and agency consultation by proponents;
- the quality of information provided in support of the applications;
- the extent to which equity issues are identified;
- the extent to which proponents have or are able to research or trial a proposed site.

2.4 Conclusions

Several conclusions may be drawn from analysis of the processes described above:

- In statutory terms, the pearling and aquaculture assessment processes are very similar and could readily be dealt with as a single administrative process, without changing the legislation;
- A single application process is not prevented by the different routing of pearling and aquaculture applications through to the Broome office of the Fisheries Department and the IDCA because these are internal, non-statutory procedures of the Fisheries Department;
- The Fisheries Department is not merely a clearing house for referrals but the central assessment agency for authorisations, even where proposals are formally assessed by the EPA;
- There are several potential areas of improvement in pre-application procedures. The Fisheries Department should encourage applicants to include community consultation and research to meet the Fisheries Department's and EPA requirements in their business planning;

Table 1. Retrieval Matrix for Application Assessment

Information Requirements	FDWA	EPA	CALM	DOT	MFP	DCT	WRC	DAA	DOLA
1. Proponent Details	X	*	*	*	*	*	*	*	*
Suitability	X								
2. Area Onshore	X	X	X	*	X	*	X	X	X
Offshore	X	X	X	X	*	X	*	*	X
Reserves	*	X	X		*			*	X
Aboriginal Interests	*							X	X
3. Water Supply, Effluent	X	X	*				X		*
4. Culture Species	X	X	X						
Fisheries Impacts	X		*						
Predator Control	X	*	X						
5. Construction Details	X	*	*	X					
Infrastructure	X	*		X			X		
6. Navigation	X		*	X	*	X			
Moorings, Jetties	X		*	X	*	X			X
Conservation	*	X	X		*		*		
CALM Estate		X	X						*
8. Environment Impact Assessment	X	X	X		*		*	*	
9. Commercial and Marketing	X					*		*	
Liaison and Agency Consultation	X	X	*	*	*	*	*	*	*
10. Technical Knowledge	X	*	*						
Financial Investment	X					*			

Key

Shaded Lead Agency
 X Assessment
 * Interest

3 SUMMARY OF ISSUES RAISED DURING CONSULTATION PROCESS

The following represents a summary of comments made during the consultation process.

3.1 Public Consultation

- There is a need to significantly improve public consultation processes so that equity questions can be resolved in a more dispassionate manner;
- the public expect a high degree of consultation with adequate advertising and response time on aquaculture proposals given the potential for long-term negative impacts on the ecosystem;
- there need to be guidelines for consultation in which the proponent should be responsible for initial consultation;
- there are resource and cost issues with advertising;
- respondents need to focus on issues of relevance in submissions;
- there is concern at increasing politicisation of consultation processes;
- industry accepts that there may need to be a broader public comment consultation process for applications;
- the Fisheries Department should build a better working relationship with recreational fishing interests to ensure that access for recreational fishing is maintained in marine farming projects. The terms of reference of Regional Recreational Fishing Advisory Committees could be widened to enable them to be more proactive in responding to proposals.

3.2 Application Processes

- a more open public consultation process prior to referral of applications would help identify issues of public interest or concern which can then be addressed and may assist in reducing conflict;
- equity issues should be addressed in the early stages;
- applications for aquaculture and pearling sites should be treated as a three step process;
- some kind of permit or tenure is needed to secure interest in a site for research and to protect intellectual property prior to formal application;
- there needs to be a mechanism for amendment of applications;
- application procedures should distinguish between major new proposals and less complex ones such as renewals, alterations, one-off cases in pristine water, and areas to be tried out before formal application;
- resolution of environmental and equity issues is made difficult by overlapping responsibilities in legislation. An inter-agency agreement with the EPA is needed;
- people should be able to obtain or view a simple document which summarises the salient points of an application before making a submission;
- the Fisheries Department should have a filtering role to ensure the quality of information provided by the applicant is adequate;
- the Fisheries Department should address the issue of cumulative impacts;
- an essential criteria for assessment is whether a proposal involves exclusive possession or is non-exclusive;
- need transparent assessment processes and the application of a precautionary approach;

- any new consultation process needs to have finality at every step through formalisation of the process;
- five nautical miles is the current separation standard for *Pinctada maxima* pearl leases, but it should also apply to all other aquaculture proposals for disease control and management reasons;
- proponents should undertake consultation with local recreational fishing groups well before an application is submitted. The Fisheries Department should advertise major proposals, allow sufficient time for a considered response and provide feedback to organisations making submissions;
- the Fisheries Department should maintain a register of applications for marine farming submissions.

3.3 Transparency and Accountability

- Where there is competition for sites, the community view is that there needs to be a transparent assessment and allocation process;
- there is a need for transparency in the consultation process. Applicants for authorisations do not currently see the submissions of people objecting and cannot respond;
- There needs to be feedback to people providing comment.

3.4 Equity and Resource Sharing

- perceived or actual conflict has occurred between recreational fishers and divers; and pearling and aquaculture leases. Navigation conflicts involve both commercial and recreational shipping;
- guidance is needed in determining resource sharing principles and trade offs between competing interests;
- the principal issues of public concern with pearl farms are safety and access for navigation and recreational fishing;
- conditions allowing dual use of marine farming areas by recreational fishers need to be applied to leases and rights of access made clear to all parties. Better marking arrangements are needed to enable recreational fishers to go through and around marine farming areas, particularly at night.

3.5 Planning for Marine Farming

- To meet the demand for secure sites for future development, the Fisheries Department should undertake or sponsor the strategic planning of key areas, to include wide community consultation to fully address environmental and equity and resource sharing issues;
- areas free of encumbrance for aquaculture need to be defined through planning studies in identified areas;
- there is a need to develop long-term plans for the industries similar to those of the Department of Resources Development to provide for growth, to reduce conflict and to provide protection and certainty;
- the Fisheries Department should move towards pro-active planning and application procedures and use its substantial research capability to provide baseline data for planning;
- there is a need for better technical information to underpin the existing knowledge base;

- there is a need for planning of pearling and aquaculture sites to ensure that associated access, land based operations and recreational and other activities of workers is compatible with land uses and land use constraints;
- the Fisheries Department needs an improved legislative base, specifically, the power to undertake or fund broad planning studies;
- pearling and aquaculture projects tend to be proposed in sheltered bays or in the lee of islands. The same areas are often of high value to recreational fishing. An audit of suitable sites for marine farming on the Western Australian coast could quickly establish those which could be made available without conflict with recreational fishing.

3.6 The CALM Marine Planning Process

- The marine reserve planning process will provide a useful opportunity for planning large areas;
- the requirements for incorporating the needs of the aquaculture and pearling industries into the marine reserve planning process are clearly established in the new legislation;
- marine reserves will afford substantive protection for aquaculture and pearling interests. There is provision for the Fisheries Department and industry involvement in consultative structures.

3.7 Objections and Appeals

- Pearlery should have the right of objection to aquaculture leases and licences.
- Industry accepts that recreational fishing interests should also be able to comment on aquaculture and pearling proposals. Provisions specifying who can make submissions and on what grounds should be included in the *Fish Resources Management Act* and the *Pearling Act*;
- There is no right of objection for the public in marine farming processes. The notification and appeal processes are generally limited to applicants, existing lessees, licence holders and people within the industries.

3.8 Native Title

- Applicants for an aquaculture lease or licence should be aware during the planning phase of potential Aboriginal interests and would well be advised to discuss proposals with any relevant Aboriginal communities in the vicinity of their proposed site;
- offshore activities are permissible and valid provided the same procedural rights are observed regarding any native title holders as are acceptable to other persons holding corresponding rights and interests in the area;
- applicants should take a broader view which accepts that Aboriginal people may have traditionally used or have spiritual associations with offshore areas, and enter into early consultations;
- the opportunity for a project to provide employment and training opportunities could be emphasised in negotiations rather than cash compensation settlements. Aboriginal people are seeking more opportunity for direct involvement in the pearling industry and also wish to have the right to take pearl oysters for meat and other traditional uses, which is currently prohibited;

- Aboriginal groups are forming their own structures to deal with consultation and referral on aquaculture. The traditional understanding of community rights to particular sites within an area can be determined within these structures and advice can be given to the Fisheries Department on areas to which different groups are entitled.

3.9 Ecologically Sustainable Development

- There is a need for a more strategic framework for the assessment of applications based on Ecologically Sustainable Development (ESD) principles;
- principles of intergenerational equity demand that these issues be addressed at the early stages of the development of this industry and proceed with the utmost caution.

3.10 Public Information and Education

- There is a lack of information on the rights of sailors and fishers to enter pearling areas and an adverse attitude of industry people toward sailors and fishers entering these waters;
- inadequate notification of new pearl farms which affect anchorages and navigation;
- perceptions of the effects of the aquaculture and pearling industries are not favourable and better consultation and identification of interested parties is required;
- A more strategic approach to dealing with the industries should be taken by the Fisheries Department. There are concerns that proponents have been encouraged to pursue options to develop projects in unviable areas within or affecting existing and proposed conservation areas, or near high tourism value sites.

3.11 Time to Process Applications

- There are lengthy delays in the issue of authorisations which have major economic implications for the industry. Delays in the issue of farm leases may lead to more ambit claims for sites;
- issuing of temporary or short term authorisations, such as for dump sites or holding areas, or trying an area out, should be a rapid process, without advertising;
- there is a need for strict timelines; simpler and swifter procedures are needed;
- an appropriate time frame for submissions would be two weeks, particularly for short term or temporary authorisations, and no reminders should be sent;
- deficiencies in basic information provided has led to delays in processing applications.

3.12 Conclusions

- There is a need to significantly improve public consultation processes so that equity and resource sharing questions can be resolved in a more dispassionate manner.
- To meet the demand for secure sites for future development, the Fisheries Department should undertake or sponsor the strategic planning of key areas to include wide community consultation to fully address environmental, equity and resource sharing issues. To do this the Fisheries Department may need an improved legislative base, specifically, the power to undertake or fund broad planning studies.

- The pre-application procedure for aquaculture and pearling sites should be treated as a three step process:

Step 1	Planning Stage	<i>application for a permit to investigate site; Government Authorities or IDCA consultation.</i>
Step 2	Preliminary proposal	<i>checklist and scoping, proponent consults community.</i>
Step 3	Formal Application	<i>Public comment on proposal sought. Referred to Interest Groups. Final referral to Government Authorities or IDCA members.</i>

Executive Director considers application in accordance with the Act and any Guidelines.

4 PLANNING AND APPLICATION PROCEDURES USED IN OTHER STATES

The planning and application assessment procedures used in other States were examined to identify a suitable process which might provide a model for WA to consider, or which may assist in addressing the issues raised.

These States have had to deal with similar issues to those facing Western Australia, and both responded by placing a moratorium on applications until broad planning studies had been completed and extensive community consultation procedures introduced through legislation.

4.1 Aquaculture Planning in Tasmania

The following is a summary of information and publications provided by the Marine Resources Division, Department of Primary Industry and Fisheries, Tasmania (McLoughlin 1996).

Marine aquaculture in Tasmania began to reach a critical stage in the early 1990's with industry demand for growth outstripping supply of readily available areas of suitable water. A relatively new feature of this situation was that applications for new marine farm sites began to meet with occasionally vigorous opposition from local residents and community groups. It became clear that existing legislation was inadequate to properly manage industry growth as well as account for other coastal zone uses and users. In late 1993 a moratorium was placed on the granting of new marine farms because appeals were by then bogging down most applications in the courts.

4.1.1 Tasmanian Legislative Provisions

The Tasmanian Government has enacted a new legislative package comprising the *Marine Farming Planning Act, 1995* and the *Living Marine Resources Management Act, 1995*.

The main elements of the new *Marine Farming Planning Act, 1995*, together with the relevant controls on marine farming, are as follows:

- the requirement for there to be Marine Farming Development Plans for marine farms. These will cover whole districts or regions (such as bays and estuaries) as well as individual farms, thus superseding the need to undertake *ad hoc* and site-by site assessment;
- the identification in these plans of Marine Farming Zones, very carefully selected and defined areas in which farming itself can occur;
- the need to monitor and manage the environmental impact of all marine farming proposals;
- the opportunity for broad community input into the development plans;
- the expansion and strengthening of provisions covering licensing, management controls and the economic return to the community.

4.1.2 Preparation of Marine Farming Development Plans

These plans are the most innovative feature of the new system, and constitute its basic mechanism. The process of developing a plan is as follows:

- preliminary identification of Marine Farming Zones;
- consultation with government agencies and interest groups;
- any necessary adjustments;
- first draft is released for a formal round of consultation;
- final draft prepared;
- final draft examined by three bodies external to the Department:
 - a) Tasmania Aquaculture Council - for the industry
 - b) Marine Farming Planning Advisory Committee - representing local interests - 12 to 15 members;
 - c) Marine Farming Planning Review Panel, an expert based body appointed by government.
 - 60 days public exhibition period of final draft with rationale and evidence described;
 - review and resolution;
 - comments and concerns assessed by the Department as planning authority which prepares a report for *Marine Farm Planning Review Panel*;
 - Panel considers the report which may call and conduct formal hearings if any concerns are not satisfactorily addressed;
 - the completed Plan may then go, for the third time, to the Minister who may approve or return for further work.

4.1.3 Allocation of Marine Farm Zones.

Given the high demand, allocation of coastal resources is seen as requiring an independent body. Although the Minister retains final decision on individual granting of marine farm leases, there is an element of arm's length dealing as far as the Government and its managing Department is concerned.

The expertise based *Board of Advice and Reference* of three members has two functions:

1. to recommend the appropriate method for allocation of authorisations in particular Marine Farming Zones (tender, direct grant etc.)
2. to assess the individual applicants and make recommendations to the Minister.

The Marine Farming Development Plans process appears to be successful in identifying both new areas available for marine farming, and in providing substantial area increases to existing farms. This has been done in a climate of active community involvement and consultation. On the whole there has been a low level of community concern, but where concern has been expressed it seems that the new processes provide transparent and acceptable forums for working through these concerns. This is reflected in results from the first few of the new plans where, for example, a 300 per cent increase in area for the Huon River Estuary Plan was achieved with only two objections, both of which were resolved by the Review Panel via the public hearing process. Substantial increases in production, income and employment in the region are forecast in the next few years.

4.1.4 Industry Comment

Mr Richard Hamlyn-Harris of the Tasmanian Aquaculture Council and Chair of the Australian Aquaculture Forum was consulted on the Tasmanian process and he advised that the new process is very good but it does have its shortcomings. The main problem is in the level of public appeals which were clogging up the system even though the new process of planning for aquaculture in a structured way was a big improvement. The issue was how much involvement and accountability was needed in the system.

Mr Hamlyn-Harris advised that the new legislation is not a bad system but “accountability” has led to abuses of the process and people were being allowed to disrupt applications unreasonably. There are unlimited appeal rights at no cost leading to frivolous or vexatious interference. People should pay for the appeal right.

There are approved Marine Farming Zones in three areas but there have been few allocations under the zones. Current applications depend on the resolve of the Minister.

4.2 Planning for Aquaculture in South Australia

The following information was provided by Mr Michael Walmsley, Senior Fisheries Officer, Primary Industries South Australia (Fisheries).

In South Australia, planning for aquaculture and the processing of development applications is conducted under the provisions of three Acts, the *Development Act 1996*, the *Harbours and Navigation Act*, and the *Fisheries Act (S 49 to 53)*.

The vesting of sub-sea Crown lands other than certain specified areas, was transferred in fee simple from the Minister for Lands to the Minister for Harbours and Navigation four years ago. The Minister for Primary Industries has delegated authority to issue title over the sea bed for aquaculture projects.

4.2.1 Management Plans

Management Plans for marine areas are prepared as Policy Statements by the Minister for Primary Industries. The procedure is:

- Preliminary draft prepared
- Agency consultation - one month
- Draft issued for public comment as *Whole of Government* document for two months

- Involved persons and applicants notified by letter
- Advertised in State and local newspapers
- Public written submissions collated
- Public meeting including display of written submissions received. Opportunity for people to respond to other submissions
- Responses collated
- Plan revised
- Final authorisation and release of management plan by the Minister for Primary Industries.

Development applications for aquaculture projects are processed under the *Development Act*. The process is as follows:

- Application received jointly by Fisheries and Planning.
- Agencies notified.
- Two week notification period.
- Adjacent interests direct notification.
- Advertisement in local newspaper giving the public the opportunity to view details and make a submission.
- Application referred to relevant decision making authority.
- Local councils in the case of land based proposals.
- South Australian Development Assessment Commission, Aquaculture Committee, in the case of marine proposals.
- Applicant and objectors notified of decision.
- Appeals on approval, refusal or conditions are heard by the Environmental Resources Development Court.

For marine proposals there are three prerequisites considered by Department of Primary Industries (Fisheries) before applications go to the Development Assessment Commission:

- Must accord with Management Plan for the area.
- A *Licence to Farm Fish* is issued.
- Land tenure over sea bed issued under delegated authority from Minister for Transport by Minister for Primary Industries.

The system has evolved over the last ten years and there is continuing public debate over environment, public access and amenity issues. Successful application is entirely possible, but the process is never quick enough for applicants, and never slow enough for environmental interests. Between 200 and 250 applications have been processed but there is a backlog resulting from what was an effective embargo on applications until management plans were prepared. The system is much simpler than Tasmania, and South Australia is in a good position to clear the backlog of applications.

South Australia is fortunate to have an advanced and robust planning system which contains specific provisions for aquaculture. In the planning system, land use, tenure and licensing matters key in well together. There is currently a Parliamentary Enquiry into Aquaculture (Environment, Economics and Planning) by a Legislative Council Sub-committee (pers.com).

4.2.2 Analysis

The Tasmanian and South Australian positions above have been derived from not disinterested sources, and industry opinion is that both systems are experiencing considerable problems with the management of marine farming.

The main features which the Tasmanian and South Australian marine farm planning systems have in common are:

- strong links to the statutory planning system for the State;
- a statutory routine for planning large geographical areas with public consultation guaranteed at several stages and strong appeal provisions for the public;
- a simple application procedure with limited public referral, but an accountable allocation body with proponent appeal provisions.

Particular features of note in these States are:

- South Australia's transfer of tenure over marine areas to the Minister for Transport and delegation to the Minister for Primary Industries;
- Tasmania's integration of marine farming development plans under the Tasmanian State Coastal Policy prepared under the *State Policies and Projects Act, 1993*, with a specific ESD framework enshrined in Schedule 1 of the *Marine Farming Planning Act, 1995*.

4.3 Conclusion

The planning and assessment processes adopted in Tasmania and South Australia can not be applied directly to the Western Australian situation because the legislative and underlying structures are quite different, however the methods used to ensure that transparency, accountability and consultation meet public expectations are not dissimilar to planning and environmental legislation in Western Australia.

5 PLANNING AND ENVIRONMENTAL LEGISLATION IN WA

The brief requires that the procedures used by the Western Australian Planning Commission (WAPC) and the Environmental Protection Authority be considered in the review of existing processes. A summary of the WAPC processes, which include those used by all local authorities in WA, is at Appendix 4. The EPA's environmental impact assessment process is at Appendix 5.

5.1 Statutory Application Processes and Public Consultation

Statutory planning and application procedures in fisheries, planning and other types of legislation fall into two main groups:

- Pro-active systems where there is an existing overall plan for the area which has been developed in consultation with the community and equity questions have already been largely resolved. Town planning schemes are good examples.
- Reactive systems where equity questions need to be addressed as part of the application process. The WA *Environmental Protection Act*, 1986 and its associated procedures are a good example.

Depending on their scale, applications to commence development under town planning schemes are normally processed by the agency within a statutory time period to ensure compliance with statutes, relevant policies and the planning scheme itself. The proposal is normally referred to relevant agencies for comment or information. Public advertising would normally only occur for a major proposal likely to have a considerable impact, or one which did not readily comply with the planning context or established policies. The *Swan River Trust Act*, 1988 has such a provision. In most cases appeal provisions are restricted to an aggrieved applicant and there is no right for the public to appeal.

Where a proponent's land is not appropriately zoned for the proposed use, rezoning of part of the planning scheme will be required. The consequent process involves public advertising of a comprehensive and sustainable application which addresses all of the issues and policies likely to arise during the process. Guidelines are often provided to applicants. The proponent would normally have the right to respond to objections.

5.2 Comparison of Local and Interstate Procedures for Public Consultation

In Tables 2 and 3, the WA marine farming processes are compared with interstate and local systems using the WA planning amendment procedure for proactive *planning* systems, and the EPA environmental assessment procedure as a yardstick for reactive *application* systems. The CALM marine reserves planning procedure and the Swan River Trust development control system are included as local examples of relevance.

5.2.1 Conclusions

- Proactive planning systems have an extensive public consultation component, whereas reactive application assessment procedures are simpler, unless there is no corresponding planning framework to support them.
- The public need to be satisfied that applications will be dealt with in accordance with an established plan and policy framework. Where such a plan exists, simple application procedures with limited referral and public consultation are appropriate. Where there is no established plan, much more rigorous procedures are required in the application process to ensure public expectations for transparency and accountability are met.
- The application procedures for pearling and aquaculture authorisations do not fare well in comparison with the other systems in terms of public consultation. Application procedures for marine farming should have public consultation stages similar to the WAPC and EPA models.

Table 2. Public Involvement in Planning Procedures

Planning Procedures Shading indicates Public Involvement								
Generalised Process	EPA	WAPC	SRT	CALM	SA	TAS	AQUA	PEARL
Notification of Plan		X	X	X				
Community/Technical Committee		X	X	X				
Consultation, Call for submissions		X				Farmers		
Draft Initial Plan/Zones		X			X	X		
Consult Agencies/Interest Groups		X	X	X	1 Mth	X		
Community Meetings, Consultation		X		X		X		
Review Zones		X				X		
Draft Plan		X	X	X		Minister		
Initial Review		WAPC	LGA's			TAC MFPAC MFPRP Minister		
Public Release or Notification		X	2 Mths	2 Mths	2 Mths	X		
Public Exhibition		Optional			X	60 Days		
Resolve Concerns		X	X	X	X	MFPRP		
Public Hearing		Optional				X		
Plan Modified if Required		X	X	X	X	X		
Approval		WAPC	X	Minister	Minister	Minister		
Gazettal		X	X	X		X		
Appeal		Parliament						

Key

WAPC	Major Amendment Process, similar to Region Plan
SRT	Swan River Trust Management Program
CALM	Management Plan
TAC	Tasmanian Aquaculture Council
MFPAC	Marine Farming Planning Advisory Committee
MFPRP	Marine Farming Planning Review Panel

Table 3 compares the same systems in terms of their public consultation in *application* procedures.

Table 3. Public Involvement in Application Procedures

Application Procedures Shading indicates Public Involvement								
Generalised Process	EPA	WAPC	SRT	CALM	SA	TAS	AQUA	PEARL
Proponent Consults Before Lodgement	X	X	X		X	X	X	X
Decision on Assessment Level	X							
Public Appeals	14 Days							
Guidelines Prepared	14 Days							
Consult Agencies/Interest Groups	X				X	BAR	IDCA	60 Days
Proponent Documentation	X							
Report Released	X							
Public Review or Advertising	4 wks		Optional		X			
Summary of Submissions	X		X					
Proponent Responds	X						X	X
Assessment and Report	X	X	X				X	X
Report Published	X							
Public Appeals	14 Day Appeal						Licensees only	Licensees only
Conditions Set	X	WAPC	Minister		Minister	Minister	X	X
Parties Advised	X		X		X	X		
Proponent Appeal/ Objection	14 Days Minister	Minister TPAC	Minister reconsider		ERDC	Minister	Tribunal	Minister

Key

BAR	Board of Advice and Reference (Tasmania)
ERDC	Environment Resources Development Court (SA)
IDCA	Inter Departmental Committee on Aquaculture (WA)
TPAC	Town Planning Appeals Committee (WA)

5.3 Application of WAPC and EPA Procedures to Marine Farming Authorisations

The relevance of the EPA and WAPC processes to this review is that:

- both are well established and efficient systems which have strong public acceptance; and certainty at each stage;
- they are both “state of the art” in terms of public consultation, transparency and accountability;
- as existing structures already in place they could be either used as a model for pearling and aquaculture, or perhaps be directly utilised for the assessment of applications currently processed by the Fisheries Department; or for the preparation of industry or area plans;
- the two processes have been formally linked by the passage of the *Planning Legislation Amendment Act, 1997*, which brings planning and environmental assessment procedures together at an early stage of the zoning process. The Act has amended planning and environment legislation, which previously had no explicit links, by better integrating town planning and environmental processes;
- the majority of aquaculture proposals on private lands are already processed through the planning system for development approval. Most aquaculture proposals on Crown Land, and many in estuaries or rivers covered by local planning schemes, also require development approval through the planning system;
- some pearling and aquaculture proposals are formally assessed by the EPA system and some are informally assessed, but all require referral to the EPA where there is potential for environmental impact.

5.4 Use of the Planning System

As discussed in Section 4, the South Australian and Tasmanian Governments both saw merit in ensuring that aquaculture planning and approval processes were integrated with, or at least related to, the planning process; which in turn is related to the environmental impact assessment process.

The position is more difficult in Western Australia because statutory planning does not cover marine areas which are the focus of this report. Statutory schemes are made for local government areas and regions which do not normally cover marine areas. To extend them to offshore areas through legislation may invoke many difficulties, the most obvious of which is that navigational aids and marine development including offshore oil and gas, would then be classed as “development” and require planning approval. These matters are more properly controlled under existing specialist marine legislation.

There are some marine areas, including some estuaries, which are technically within statutory planning scheme areas. The Perth Metropolitan Region Scheme (MRS) includes offshore waters between Yanchep and Port Kennedy and offshore to Phillip Rock at Rottnest Island, and includes the waters of Cockburn Sound. These waters are reserved as “Waterways” in the MRS, but as there is no policy or procedural framework for that reserve, development control is left to marine authorities. Applications do not go to the WAPC or Councils unless onshore facilities are involved in a proposal.

A special case is the *Swan River Trust Act*, 1988 which is legislatively linked to the *Metropolitan Region Town Planning Scheme Act*, 1963. In broad terms the *Waterways and Parks and Recreation Reserves* of the MRS along the Swan River define the Trust's Management Area. Within the Management Area, the Trust is required to prepare and administer a management programme under Part 3 of the Act. Under Part 5 of the Act, the Trust is given the development control powers formerly undertaken by the WAPC. Any aquaculture proposals in the Trust's Management Area would be determined by the Trust after referral to relevant agencies and the Local Authority.

Probably the most significant opportunity for marine farm planning is in Regional Plans, which although generally not statutory plans, apply to large areas of the State, often including significant marine areas.

Regional Plans are prepared after extensive community consultation and are authoritative documents indicative of future Government and community direction and growth. If pearling and aquaculture were appropriately planned as part of these studies, the resulting plan could be used as the proactive planning base for the allocation and approval of marine farming sites which is identified as a major need in this review.

Regional Plans have been completed for several coastal regions and given the need to provide for aquaculture as a major growth industry on land, it is logical that they should also address the resource sharing issues surrounding marine farming, particularly as the Government has identified aquaculture as a priority industry for support.

Collaboration between the Fisheries Department and the Ministry for Planning would be desirable to establish the marine information requirements of such plans, the resourcing needs and provision of expertise to the Ministry.

Over the last ten years, Coastal Management Plans have been prepared for many areas of WA's coastline. These plans focussed on development control and foreshore protection issues rather than allocation of waters for marine uses, and now tend to be subsumed in the regional planning process. Nevertheless, the plans are supported by local authorities and regional development authorities and are occasionally up for review. It would be useful if any review included consideration of marine farming and associated onshore facility site allocation and it is suggested that Fisheries Department should participate in any reviews or new coastal planning studies.

5.4.1 Conclusions

- The extension of statutory planning schemes to cover marine areas is not a viable option for processing marine farming applications, or for the resolution of resource sharing issues.
- Participation in regional planning studies, coastal plans and estuary planning studies, and their extension to cover offshore marine farming, should be a priority of the Fisheries Department.

5.5 The EPA and Planning Systems as Models

Other states have seen fit to link their planning, environmental impact and marine farming assessment systems as closely as possible to ensure that established planning structures are shared, that community consultation and communication is more simple, and that the inevitable link between onshore and offshore facilities can be assessed in the same context. The resolution of environmental issues and resource sharing disputes is probably achieved more easily in the broader forum of planning generally, than in specialist studies conducted by the Fisheries Department solely for marine areas, where disputes between parties will be more sharply in focus.

Tables 2 and 3 compared the planning and application procedures of the other states, WAPC, EPA and the CALM process for marine park planning. As the WAPC and EPA processes are widely accepted as having good standards of public participation, it is reasonable to conclude that they represent a proper and adequate level of public consultation for WA and that they can be used as a model for marine farming processes. The existing application of these systems to aquaculture on land provides a compelling logic that marine farming processes should parallel and link with them.

5.5.1 Conclusion

Application procedures for pearling and aquaculture should have public consultation stages similar to the WAPC and EPA models.

5.6 Processing Marine Farming through the Planning System as a “Contract” Arrangement

The use of the WAPC planning system as a “one stop shop” for processing marine farming applications has a certain appeal. The system developed by the Ministry for Planning over the years has efficient referral mechanisms, appropriate structures and procedures, and a professional, dispassionate assessment system. One could envisage a system, similar to a region scheme application, where applications were lodged with the Fisheries Department and the Local government authority simultaneously, passed with recommendations or advice to the WAPC or the MFP for referral to relevant agencies, then packaged for consideration and determination by the Executive Director of the Fisheries Department. Such a system might be contemplated for administrative convenience if it was considered that the core business of the Fisheries Department was managing the fisheries, rather than being a clearing house for the processing and referral of applications for authorisations.

Problems with such an approach include:

- the system would still not provide for all situations, for example proposals in marine parks or estuary waterways;
- it would have little relevance to pearl farming proposals;
- applications for authorisations are for leases, licences and permits, some temporary rather than for development approval, and many may require amendment or negotiation during the process, a situation not easily handled by the planning system;

- there are many other authorisations within the Fisheries legislation which have no relevance to Planning.

Ultimately, judgment on such a notion depends on the extent to which the assessment of the content of the applications is a clearing house role or one mainly requiring the expertise of the Fisheries Department. As shown in Table 1, most of the judgements and assessments required are mainly for the Fisheries Department, so there is no compelling logic to adopt the approach contemplated.

5.6.1 Conclusion

It would not be feasible to use the planning system as a clearing house for marine farming authorisations because most of the judgements and assessments required are mainly for the Fisheries Department.

5.7 The Environmental Impact Assessment Process

The key stages of the environmental impact assessment process are:

- setting of level of assessment and the associated appeal process. Persons may appeal to the Minister for Environment against the level of assessment set by the EPA, but only to raise the level of assessment. A proponent has no right to appeal for the level to be lowered.
- public submissions on the proponent's review report;
- proponent can respond to a summary of public submissions;
- release of the EPA's assessment report by the Minister. Anybody may appeal on the EPA report to the Minister within 14 days. The Minister may remit an appeal to the EPA or take the appeals into consideration when setting conditions;
- proponent may appeal on conditions within 14 days of issue.

The EPA's scoping process, which leads to the setting of the level of assessment and any subsequent guidelines, is dependent upon the content, quality and adequacy of information provided with the application. It is useful if a proponent has undertaken community consultation before submitting an application because that information would assist the EPA (and the Executive Director of the Fisheries Department) to form a judgement on the extent of environmental, equity and social environmental issues involved with the proposal.

As the issues and quality of information needed by both the EPA and the Executive Director are similar, the Fisheries Department should be able to filter applications through joint scoping of applications before they are referred to the EPA for determination of the level of assessment. This may reduce the level of frustration for the proponent and agencies alike.

The ability of the proponent to respond to a summary of public submissions is a useful step to provide fairness for the applicant and a more objective basis for decisions. The need for a similar mechanism in marine farming procedures was identified by industry in submissions.

The separation of appeals by the public on the EPA report, from appeals by the proponent on conditions subsequently set, is an important measure which introduces finality and transparency into the resolution of public interest questions, but still allows the proponent to identify and appeal against conditions which may relate to fairness, practicality or viability of the project.

Where the EPA decides on a formal level of assessment, the Executive Director and other agencies should take no action which may permit the proposal to proceed until the Minister for Environment has set conditions and authorised implementation of the proposal. During that period when a formal review document is prepared and assessed, the Executive Director and the Fisheries Department should continue with the assessment of financial equity, industry and fisheries management aspects of the application and make a submission to the EPA process if appropriate. Any consultations or referrals not dealt with in the EPA process should also be undertaken so that the application can be determined as soon as the outcome of the EPA process is known.

Pre-application planning, investigation, research and consultation by the proponent in a three step application process similar to that proposed in the Fisheries Officer's Workshop, would facilitate the preparation of suitable documentation as part of the proponent's business plan. Through such consultation, the requirements of the EPA could be reasonably predicted and the documentation prepared in a manner easily modified for formal assessment at the start. This would avoid a setback to the proponent of a decision to formally assess the proposal.

5.7.1 Conclusions

- the Fisheries Department should encourage applicants to include community consultation and research to meet EPA and FDWA requirements in their business planning as part of a new three step application process;
- the Fisheries Department and the EPA should develop guidelines for joint scoping of pearling and aquaculture applications.
- provision for a proponent to be able to respond to a summary of public submissions would be a useful mechanism in marine farming application procedures;
- a provision for the public to request a review of a prospective decision of the Executive Director, should be introduced to marine farming application procedures;
- provisions limiting objections to proponents and affected persons should be retained.

6 A SINGLE PROCESS FOR MARINE FARMING AUTHORISATIONS

The brief required consideration of a single application process for marine farming applications, and whether the legislation may need to be amended to achieve this. The consultations indicated there is support for a single, more easily understood and equitable system.

6.1 Proposed Process

In statutory terms, the pearling and aquaculture assessment processes are very similar despite the different internal routing of applications through the Broome office of the Fisheries Department and the IDCA (Diagram 1). It is thus possible to devise a single administrative procedure to provide for all marine farming authorisations, and a suggested procedure is at Diagram 2.

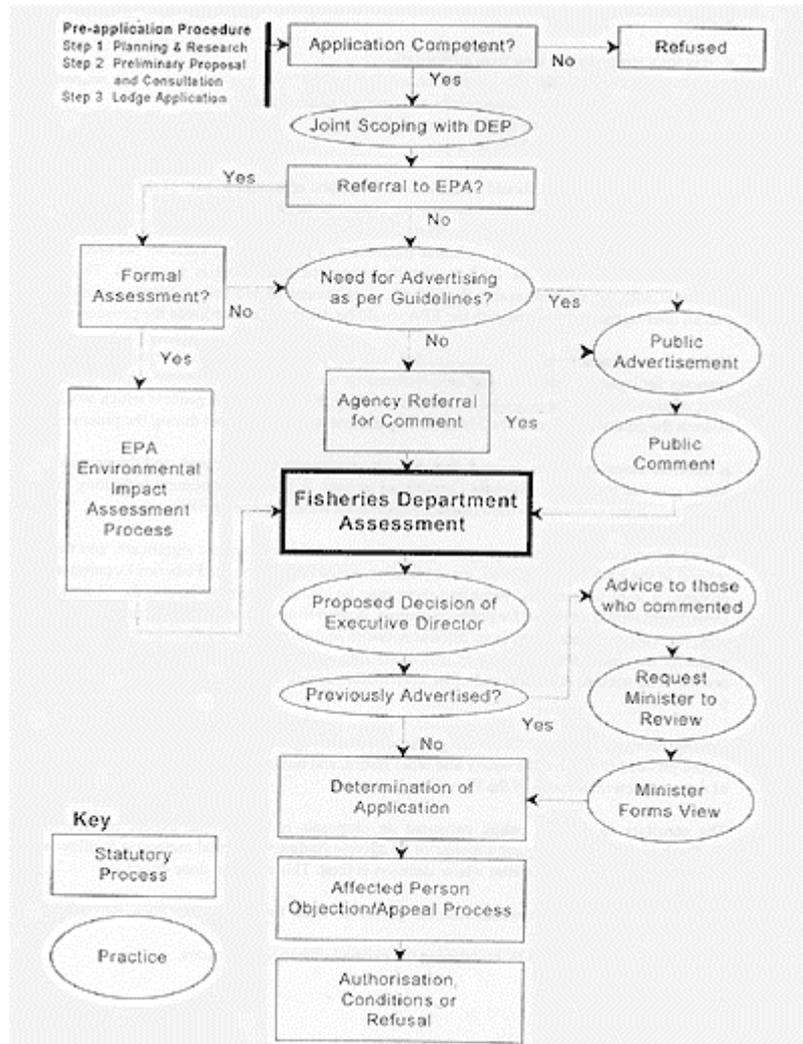
This flow diagram is based on the assumption that reactive situations will continue to occur, but will be less frequent as broad planning schemes are developed for marine areas. It provides the option for simpler processing where the applications are for temporary authorisations, or where an application is consistent with an established plan. Elsewhere in the report it is recommended that the Fisheries Department undertake or fund planning of marine areas, and the WAPC model, which is common to most planning agencies and studies in WA, would be used.

The suggested application procedure links with and parallels the EPA environmental impact assessment model to the extent that it would give the public opportunities to participate in the process by being able to comment, and later to request a review of prospective decisions, at similar stages to the EPA process. It differs in that the “level of assessment” concept, including the appeal provision, is omitted because proposals requiring more stringent examination would almost certainly proceed through the EPA process where such provisions already apply.

It is proposed that a fundamental principle of the EPA system should also apply to marine farming applications. This is that once an application is accepted as competent, there is a presumption that it is capable of being approved if suitable management techniques or conditions are applied. This means that initial scoping must be more thorough, but it enables resource allocation issues to be settled through the device of setting and reviewing conditions, and introduces a degree of certainty early in the process.

The *Pearling* and *Fish Resources Management Acts* both have provisions that a person is not entitled to the grant of an authorisation as of right. This must be addressed in the scoping of an application.

Diagram 2 Proposed Single Process for Marine Farming Applications



Several potential areas of improvement have been identified in pre-application procedures which would facilitate scoping, and may simplify the identification and resolution of equity issues. Once an application is established as competent, an assessment needs to be made whether:

- it is for a temporary or long term authorisation;
- there are likely to be significant environmental effects;
- there are likely to be significant equity and resource sharing issues;
- a CALM nature reserve or marine reserve is involved;
- referral to the EPA is likely to be required.

Whether or not a proposal should be advertised for public comment as part of the process, in order to resolve equity and resource sharing issues, is largely dependent on the statutory procedures of other decision making authorities. Given that the Department of Environmental Protection will often be making a similar judgement, a joint scoping exercise between the Fisheries Department and the DEP to identify a level of assessment is suggested. This is consistent with the suggestion that the Fisheries Department should have a filtering role and that an inter-agency agreement with the EPA would be desirable to coordinate the processes.

If formal assessment by the EPA was decided, then the proposal would be referred by DEP to agencies for input to guidelines and be advertised by the EPA to enable public appeal on the level of assessment. The proposal would then proceed through the EPA process which would address the equity questions. The Fisheries Department would have input during the process.

If informal assessment was decided, that decision would still be advertised, and the proposal would proceed through the Fisheries Department process. A joint advertisement indicating the public can direct comment to the Fisheries Department would be appropriate.

Where it is decided in joint scoping that the environmental issues are not significant, and that referral to the EPA is not required, the application would go through the Fisheries Department process. If joint scoping had identified there may be significant equity issues, the Fisheries Department would advertise for public comment. A need to advertise for public comment may arise on receipt of comments from referral agencies and groups; or another decision making authority may intend to advertise as part of its role, in which case advertising may not be needed. The need to advertise and other consultation issues are further addressed in Section 6.2.

Having received comment from the public or referral agencies, the Fisheries Department would proceed to resolve the equity and other issues, and advise persons who made comment of the prospective decision of the Executive Director.

The corollary to seeking public comment on proposals is that people expect to receive feedback and be able to request a review of an adverse finding. The usual method is to allow a form of objection to the Minister whose decision is final. This could be done either:

- early in the process, in which case the perceived need for certainty in each step of the process can be satisfied;
- at the end of the process by broadening the existing objection provisions.

The introduction of an early review provision with the retention of existing objection rights at the end of the process, would be consistent with the EPA process and most similar legislation and is recommended. In either case amendment to the legislation would be necessary, however it is considered that there is no legal impediment to the suggested procedures being introduced administratively on a trial basis.

6.2 Public Consultation

Where an application is to be advertised, a succinct summary of the application and the relevant issues should be provided to facilitate public comment. Similarly a suitable summary of the Executive Director's prospective decision should be issued to those who provided comment so that any request for a review is focussed on the central issues.

The vexed question of how to introduce public consultation, transparency and accountability into marine farming application processes is made difficult by the wide variation in the complexity and range of authorisations. Simply classifying applications into "major and minor", and advertising major ones for public comment, leaves too much room for debate.

A unique feature of WA fisheries legislation is the provision for Ministerial Policy Guidelines to be issued for the Executive Director's guidance. These guidelines are not only for the Executive Director as they also serve as a transparent information medium on criteria used for dealing with important issues and the rights of the general public.

Such a guideline to cover public consultation and advertising in application procedures may provide a means of meeting public expectations for transparency. It would also have the advantage of allowing early introduction of the proposed new measures for testing for an appropriate period prior to the introduction of legislation.

A draft Guideline which could be issued pursuant to Section 246 of the *Fish Resources Management Act* 1994 and Section 24 of the *Pearling Act* 1990 accompanies this report for consideration and discussion.

6.3 Conclusions

- There appears to be no legal impediment to a single application process for marine farming authorisations, similar to the flow chart in Diagram 2, being introduced.
- New components of the process would be:
 - * an improved three step pre-application procedure;
 - * joint scoping of applications with the DEP;
 - * public advertising of certain applications;
 - * provision for those who made comment during the public advertising phase to request the Minister to review a proposed decision;
 - * retention of objection provisions for affected persons.

- A Ministerial Policy Guideline should be introduced to cover public consultation and advertising in application procedures and provide a means of meeting public expectations for transparency. As many of the suggested new measures are already part of the Fisheries Department's current practice, early introduction of the new system for testing prior to the introduction of legislation would be desirable.

7 SUMMARY OF CONCLUSIONS

The following is a summary of the main conclusions from the various sections of the report. A full summary is at Appendix 3.

Current Pearling and Aquaculture Application Processes

1. In statutory terms, the pearling and aquaculture assessment processes are very similar and could readily be dealt with as a single administrative process without changing the legislation;
2. A single application process is not prevented by the different routing of pearling and aquaculture applications through to the Broome office of the Fisheries Department and the IDCA because these are internal, non statutory procedures of the Fisheries Department;

Planning and Application Procedures Used in Other States

3. The planning and assessment processes adopted in Tasmania and South Australia can not be applied directly to the Western Australian situation because the legislative and underlying structures are quite different, however the methods used to ensure that transparency, accountability and consultation meet public expectations are not dissimilar to planning and environmental legislation in Western Australia.

Comparison of Local and Interstate Procedures for Public Consultation

4. The application procedures for pearling and aquaculture authorisations do not fare well in comparison with the other systems in terms of public consultation. Application procedures for marine farming should have public consultation stages similar to the WAPC and EPA models.
5. The public need to be satisfied that applications will be dealt with in accordance with an established plan and policy framework. Where such a plan exists, simple application procedures with limited referral and public consultation are appropriate. Where there is no established plan, much more rigorous procedures are required in the application process to ensure public expectations for transparency and accountability are met.

Application of WAPC and EPA Procedures to Marine Farming Authorisations

6. The extension of statutory planning schemes to cover marine areas is not a viable option for processing marine farming applications, or for the resolution of resource sharing issues, however the Fisheries Department should give priority to participation in regional planning studies, coastal plans and estuary planning studies, and their extension to cover offshore marine farming.
7. It would not be feasible to use the WAPC planning system as a clearing house for marine farming authorisations because most of the judgements and assessments required are mainly for the Fisheries Department.
8. The Fisheries Department should encourage applicants to include community consultation and research to meet EPA and its own requirements in their business planning as part of a new three step application process;

A Single Process for Marine Farming Authorisations

9. There appears to be no legal impediment to a single application process for marine farming authorisations, similar to the flow chart in Diagram 2, being introduced.
10. New components of the process would be:
 - * an improved three step pre-application procedure;
 - * joint scoping of applications with the DEP;
 - * public advertising of certain applications;
 - * provision for those who made comment during the public advertising phase to request the Minister to review a proposed decision;
 - * retention of objection provisions for affected persons.
11. A Ministerial Policy Guideline should be introduced to cover public consultation and advertising in application procedures and provide a means of meeting public expectations for transparency. As many of the suggested new measures are already part of the Fisheries Department's current practice, early introduction of the new system for testing prior to the introduction of legislation would be desirable.

8 ISSUES AND CONCLUSIONS

The many issues raised by contributors during the consultations are summarised in Section 4. Most have relevance to the effectiveness and acceptability of Fisheries Department's marine farming processes and require consideration by the Department. The purpose of this report is to develop a single process for dealing with applications so the focus of the recommendations is on the central issues of community consultation and planning processes.

Where there is no broad plan, equity and broad environmental questions have to be addressed during the application process, which places the burden on the applicant to undertake much more work in community consultation and environmental study beyond that which would normally be needed for prudent business planning for a site.

It is concluded that to meet the demand for secure sites for future development, the Fisheries Department should undertake or sponsor the strategic planning of key areas, to include wide community consultation in order to fully address environmental, equity and resource sharing issues. To do this the Fisheries Department may need an improved legislative base, specifically, the power to undertake or fund broad planning studies. As there is a need for better technical information to underpin the existing knowledge base for planning, the Fisheries Department should use its substantial research capability to provide base line data for planning.

The requirements for incorporating the needs of the aquaculture industry into the marine park planning process are clearly established in the *Acts Amendment (Marine Reserves) Act, 1997*. This will afford substantive protection for aquaculture interests. There is provision for the Fisheries Department and stakeholders to be included on advisory committees and be involved in the consultative process for the development of CALM Act Management Plans. More importantly, it is essential that the Fisheries Department take a pro-active position in these studies to ensure adequate provision is made for marine farming in the resultant plan. The best way to do this would be through the use of the Fisheries Department's considerable research capability and knowledge base, in joint studies with CALM on sea capability, recreational and commercial fishing, and environmental effects.

It is concluded that improvements are needed in public consultation by proponents and the Fisheries Department, and in the quality of information provided with applications. Equally, the process needs to be managed so that comment in submissions is focussed on matters of relevance to the expertise or interests of the provider, and that equity questions are properly addressed within an ecologically sustainable development framework.

An important caveat on these conclusions is that when broad plans are in place for marine areas, the information requirements accompanying applications, and the amount of work required of an applicant before lodgement of an application, would be significantly reduced and the application process made much simpler.

9 RECOMMENDATIONS

It is recommended that:

- 1 Ministerial Policy Guidelines be prepared for the Executive Director's guidance on public consultation in application procedures. These may be issued pursuant to Section 246 of the *Fish Resources Management Act, 1994* and Section 24 of the *Pearling Act, 1990*.
- 2 a new single application process for marine farming authorisations which includes public consultation procedures be adopted. It would be similar to the flow chart in Diagram 2.
- 3 to meet the demand for secure sites for future development, the Fisheries Department should undertake or sponsor the strategic planning of key areas, to include wide community consultation in order to fully address environmental, equity and resource sharing issues.

- 4 consideration be given to amending the legislation to provide the Fisheries Department with the power to undertake and fund broad planning studies.
- 5 the Fisheries Department should use its substantial research capability to provide baseline data for planning.

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Smallridge, M. 1995. *Franklin Harbour Aquaculture Management Plan.* Primary Industries South Australia (Fisheries). Adelaide.

Walmesley, M. Pers.com 1997. Senior Fisheries Officer, Primary Industries South Australia (Fisheries). Personal Communication.

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Legislation

Western Australia

Aboriginal Heritage Act 1972-1980

Conservation and Land Management Act 1984

Environmental Protection Act 1986.

Fish Resources Management Act 1994

Metropolitan Region Town Planning Scheme Act 1963

Pearling Act 1990

Planning Legislation Amendment Act 1996

Public Works Act

Swan River Trust Act 1988

The Acts Amendment (Marine Reserves) Act 1997

Town Planning and Development Act 1928-1986.

Western Australian Planning Commission Act 1985

Wildlife Conservation Act 1950

Commonwealth

Native Title Act 1993

Tasmania

Marine Farming Planning Act 1995

Living Marine Resources Management Act 1995

State Policies and Projects Act 1993

South Australia

Development Act 1996

Harbours and Navigation Act

Fisheries Act.

11 GLOSSARY OF ACRONYMS

ADC	Aquaculture Development Council
CALM	Department of Conservation and Land Management
DAA	Department of Aboriginal Affairs
DCT	Department of Commerce and Trade
DEP	Department of Environmental Protection
DOLA	Department of Land Administration
DOT	Department of Transport
EPA	Environmental Protection Authority
ESD	Ecologically Sustainable Development
FDWA	Fisheries Department of Western Australia
IDCA	Inter Departmental Committee for Aquaculture
MFP	Ministry for Planning
MRS	Perth Metropolitan Region Scheme
SRT	Swan River Trust
WRC	Water and Rivers Commission

Appendix 1

CONSULTANCY BRIEF

REVIEW OF THE MARINE FARM PLANNING AND CONSULTATION PROCESS THE FISHERIES DEPARTMENT OF WESTERN AUSTRALIA

Background

The Fisheries Department and the Minister for Fisheries determine applications for licences and leases over areas of the Western Australian marine environment to enable the operation of the aquaculture and pearling 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 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.

It is intended to review these processes and propose a single mechanism which will overcome these shortcomings.

Purpose of the Study

The purpose of the study is:-

- to review the existing planning and consultation processes for pearling and aquaculture in WA and recommend how they may be improved and incorporated into a single process,
- to advise on an appropriate mechanism for incorporating the requirements of the aquaculture industry into the marine park planning process.

Information

The consultant will be required to:-

- Review the existing Pearling and Aquaculture planning and consultation processes,
- Review the planning processes which apply in South Australia and Tasmania,
- Consider the procedures adopted by the Western Australian Planning Commission when determining proposals pursuant to the *Town Planning and Development Act* and the *Metropolitan Region Town Planning Scheme Act*,
- Consider the procedures adopted by the EPA when assessing the possible environmental impact of proposals.

Project Tasks

The project tasks are to:

- Contact interested groups and bodies as outlined below and advise them of the review, invite their written submissions and/or meet them if appropriate.
- Workshop with officers from the Fisheries Department with responsibilities relating to pearling and aquaculture development to identify issues,

- Review existing processes as outlined above,
- Identify legal impediments (if any) to giving effect to more workable decision making processes.

Project Outcome.

The outcome of the study will be a draft report:-

- Documenting the outcomes of the review and consultation processes outlined above, and
- Make recommendations about a marine farm planning and consultation process appropriate to Western Australia,
- Identify any amendments to current legislation required to implement the changes.

Consultation

Groups which are to be included in the consultation process are:-

Pearling Industry Advisory Committee
Aquaculture Development Council
Western Australian Fishing Industry Council
Department of Conservation and Land Management
Environmental Protection Authority
Department of Environmental Protection
Department of Aboriginal Affairs
National Native Title Tribunal
Native Title Tribunal - Ministry of Premier and Cabinet
WA Municipal Association
Water and Rivers Commission
Department of Transport
Ministry for Planning
Aquaculture Council of WA
Pearl Producers Association
Recreational Fishing Advisory Committee
RECFISHWEST

Study Administration

The consultant shall report to the Fish and Habitat Protection Program Manager.

Appendix 2

Submissions and Consultations

Formal Submissions Received

Conservation Council of Western Australia (Inc).

Department of Conservation and Land Management.

Department of Environmental Protection.

Enclosed paper:

Department of Environmental Protection, 1996. *Southern Metropolitan Coastal Waters Study (1991-1994) Final Report*.

Department of Primary Industry and Fisheries, Tasmania.

Enclosed paper:

McLoughlin, R. 1996. *Coastal Planning and Aquaculture: Marine Farming Development Plans for Tasmania*. Marine Resources Division, Department of Primary Industry and Fisheries. Tasmania.

Water and Rivers Commission.

Enclosed paper:

Water and Rivers Commission (WA), *General Guidelines for Acceptability of Aquaculture Projects*.

Consultations and Meetings

Mr Jeff Barham	Consultant, ERM Mitchell McCotter, for the Pearl Producer's Association.
Mr Simon Bennison	Aquaculture Council of Western Australia.
Mr Lindsay Brady	Cossack Pearls Pty Ltd.
Mr Ross Brown	Captain Cruising Section, Fremantle Sailing Club.
Dr Jim Burt	Department of Conservation and Land Management.
Mr John Clarke	Consultant, Native Title Unit, Department of Premier and Cabinet.
Mr Neville Crane	Dampier Pearls Pty Ltd.
Mr Greg Davis	Department of Environmental Protection.
Mr Chris Gunby	Water and Rivers Commission.
Mr Richard Hamlyn-Harris	Tasmanian Aquaculture Council and Chair of the Australian Aquaculture Forum.
Mr Simon Hancocks	Department of Conservation and Land Management.
Mr Russel Hanigan	Manager, Paspaley Pearls WA and Chairman, Pearl Producers Association.
Mr Lindsay Harbord	Chair, Recreational Fishing Advisory Committee.
Mr Ben Hollyock	Department of Environmental Protection.
Mr Dave Jackson	Maxima Pearls Pty Ltd.
Mr George Kailis	Managing Director, M G Kailis Group of Companies.

Mr Keiran McNamara	Department of Conservation and Land Management.
Dr Chris Simpson	Department of Conservation and Land Management.
Mr Ian Stagles	Interim Chair, RECFISHWEST.
Mr Jasper Trendall	Aquaculture Development Officer, Fisheries Department WA.
Mr Michael Walmesley	Senior Fisheries Officer, Primary Industries South Australia (Fisheries).

Fisheries Department Officers' Workshop

Ms Tina Thorne	Senior Development Officer Aquaculture.
Ms Heather Brayford	Pearling Sub Program Manager.
Mr Colin Chalmers	Fish Habitat Protection Program Manager.
Mr David Giles	Special Projects Officer.
Mr Greg Paust	Chairman IDCA, Pearling and Aquaculture Program Manager.
Ms Barbara Sheridan	Executive Officer, Inter Departmental Committee on Aquaculture. Aquaculture Development Officer.
Ms Patricia Summerfield	Senior Policy Officer, Native Title.
Mr Bill McSharer	Chairman, Legislation and Licensing Sub-committee of the Aquaculture Development Council.

Appendix 3**List of Conclusions**

The following list of conclusions was extracted from the various sections of the report for reference purposes.

Section 2 Current Pearling and Aquaculture Application Processes

- In statutory terms, the pearling and aquaculture assessment processes are very similar and could readily be dealt with as a single administrative process, without changing the legislation;
- A single application process is not prevented by the different routing of pearling and aquaculture applications through to the Broome office of the Fisheries Department and the IDCA, because these are internal, non statutory procedures of the Fisheries Department;
- The Fisheries Department is not merely a clearing house for referrals but the central assessment agency for authorisations, even where proposals are formally assessed by the EPA;
- There are several potential areas of improvement in pre-application procedures. The Fisheries Department should encourage applicants to include community consultation and research to meet the Fisheries Department's and EPA requirements in their business planning;

Section 4 Planning and Application Procedures Used in Other States

The planning and assessment processes adopted in Tasmania and South Australia can not be applied directly to the Western Australian situation because the legislative and underlying structures are quite different, however the methods used to ensure that transparency, accountability and consultation meet public expectations are not dissimilar to planning and environmental legislation in Western Australia.

Section 5 Comparison of Local and Interstate Procedures for Public Consultation

- Proactive planning systems have an extensive public consultation component, whereas reactive application assessment procedures are simpler, unless there is no corresponding planning framework to support them.
- The public need to be satisfied that applications will be dealt with in accordance with an established plan and policy framework. Where such a plan exists, simple application procedures with limited referral and public consultation are appropriate. Where there is no established plan, much more rigorous procedures are required in the application process to ensure public expectations for transparency and accountability are met.

- The application procedures for pearling and aquaculture authorisations do not fare well in comparison with the other systems in terms of public consultation. Application procedures for marine farming should have public consultation stages similar to the WAPC and EPA models.

Application of WAPC and EPA Procedures to Marine Farming Authorisations

- The extension of statutory planning schemes to cover marine areas is not a viable option for processing marine farming applications, or for the resolution of resource sharing issues.
- Participation in regional planning studies, coastal plans and estuary planning studies, and their extension to cover offshore marine farming should be a priority of the Fisheries Department.

The EPA and Planning Systems as Models

Application procedures for pearling and aquaculture should have public consultation stages similar to the WAPC and EPA models.

Processing Marine Farming through the Planning System as a “Contract” Arrangement

It would not be feasible to use the WAPC planning system as a clearing house for marine farming authorisations because most of the judgements and assessments required are mainly for the Fisheries Department.

The Environmental Impact Assessment Process

- the Fisheries Department should encourage applicants to include community consultation and research to meet EPA and its own requirements in their business planning as part of a new three step application process;
- the Fisheries Department and the EPA should develop guidelines for joint scoping of pearling and aquaculture applications.
- provision for a proponent to be able to respond to a summary of public submissions would be a useful mechanism in marine farming application procedures;
- a provision for the public to request a review of a prospective decision of the Executive Director, should be introduced to marine farming application procedures;
- provisions limiting objections to proponents and affected persons should be retained.

Section 6 A Single Process for Marine Farming Authorisations

- There appears to be no legal impediment to a single application process for marine farming authorisations, similar to the flow chart in Diagram 2, being introduced.

- New components of the process would be:
 - an improved three step pre-application procedure;
 - joint scoping of applications with the DEP;
 - public advertising of certain applications;
 - provision for those who made comment during the public advertising phase to request the Minister to review a proposed decision;
 - retention of objection provisions for affected persons.

- A Ministerial Policy Guideline should be introduced to cover public consultation and advertising in application procedures and provide a means of meeting public expectations for transparency. As many of the suggested new measures are already part of the Fisheries Department's current practice, early introduction of the new system for testing prior to the introduction of legislation would be desirable.

Western Australian Planning Commission Procedures

In Western Australia, Planning is administered under the *Town Planning and Development Act 1928-1986*, the *Western Australian Planning Commission Act 1985*, the *Metropolitan Region Town Planning Scheme Act 1959*, and regulations under the Acts. Planning is administered at three levels by the Minister for Planning, the Western Australian Planning Commission and the 144 Local Government Authorities in the State. Further details and flow charts of the planning system are included in **Western Australian Planning Commission, 1996. *Planning For People: An Introduction to the Planning System in Western Australia.***, from which this summary was prepared.

Recent Changes to the Legislation

Changes have recently occurred to the planning process, following the *Planning Legislation Amendment Act 1996* taking effect. The changes bring planning and environmental assessment procedures together at an early stage of the zoning process. Environmental assessment of town planning matters will be undertaken “up front” at the land rezoning stage. The community can have greater confidence in the land-use planning process because the environmental consideration of proposed land uses and development at this early stage will provide certainty that environmental factors have been given proper consideration long before development occurs.

The process, which covers both region schemes and town planning schemes and amendments to both, involves responsible authorities consulting the EPA during the rezoning process. The EPA will consider the environmental impact of a scheme or an amendment and, if appropriate, will issue instructions for an environmental review to be undertaken before a scheme or amendment is advertised for public submissions. Land subdivision or development can proceed in accordance with environmental conditions incorporated into schemes, and unless extraordinary circumstances occur, there will be no need to undertake environmental impact assessments at the subdivision or development stage.

Strategic Planning and Statutory Planning

Strategic planning focuses on the “big picture” long-term and regional planning throughout Western Australia. It integrates a wide range of economic, social environmental and infrastructure issues. The Commission is responsible for the State Planning Strategy, which aims to coordinate regional land-use planning and development in Western Australia.

Statutory planning is the legal arm of planning. Legislation and regulations ensure appropriate land use and development controls exist to manage effectively the process of land use, land supply and urban development.

Planning Policies

Planning policies are made by the Commission and local government to provide guidance on planning, land use and development matters. Planning policies help the Commission and local government to deal consistently with applications. They are a fundamental aspect of town planning and are more flexible than statutory provisions.

Town Planning Schemes

Town planning schemes set out the way land is to be used and developed. They classify areas for land use and include provisions to coordinate land use and development in a locality. They also include controls to ensure long-term planning objectives are achieved.

There are two tiers of town planning schemes in Western Australia: the region scheme and the local government town planning scheme. The Commission is responsible for the preparation and amendment of region schemes. The Perth Metropolitan Region Scheme (MRS) has been prepared to control land use and development in the Perth Region. This is made, amended and administered under the *Metropolitan Region Town Planning Scheme Act*.

Development

Development applications are lodged with the local government, even if the proposal has regional significance and is subsequently referred to the Commission. Planning approval is generally required prior to the use of the land or building. In most cases a change of use also requires planning approval. The reasons for requiring development approval includes the avoidance of conflict between different uses on adjoining lots. It is also necessary to ensure the completed development meets certain minimum standards such as for building setbacks, car parking or landscaping.

Where the Commission considers development may have regional significance, it may require an application to be referred to it. The Commission may provide advice to the local government for it to determine the application or may request a recommendation from the local government and make the decision itself. The Commission and local government will take into consideration the provisions of the MRS, local town planning scheme and any structure plans or planning policies when determining the development application.

Where a development application is submitted for land abutting or included in the Swan River Trust Management Area, it must be determined by the responsible authority in accordance with the provisions of the *Swan River Trust Act 1988* and the Metropolitan Region Scheme.

Appeals

An appeal by an applicant for subdivision or development approval may be made to either the Minister for Planning or the Town Planning Appeal Tribunal, if the Commission or local government has exercised a discretion in deciding the application. An appeal made to one extinguishes the right of appeal to the other for that reason. There is a general right of appeal for the public against decisions in the town planning scheme or scheme amendment processes but only on environmental matters. These appeals are to the Minister for Environment.

Environmental Impact Assessment Procedures of the EPA

The following information was summarised from various EPA publications listed in the references.

Environmental impact assessment provides a way in which independent environmental advice can be given to Government so it can properly decide the balance between environment and development on the basis of a range of advice covering political, environmental, economic, social and cultural issues. The EPA provides independent advice to the government and the community on ways to ensure that development proposals are environmentally acceptable. The government decides whether or not to accept that advice.

The public expect to be advised of proposals by local and state government, and developers. The community also expects to have its views to be considered about planning and development before the government makes a decision. Environmental impact assessment is designed to ensure that people are told about development, have a say, and are heard before decisions are made. The EPA regards public involvement as fundamental to the assessment process.

The EPA has several options for dealing with a proposal referred for assessment. It may:

- decline to assess it because it is considered environmentally insignificant;
- assess it 'in house' and provide public advice (known as an Informal Review with Public Advice);
- assess it 'formally' as a Consultative Environmental Review, Public Environmental Review, or Environmental Review and Management Programme.

Formal assessments require varying degrees of environmental and public review and evaluation. The proponent, in consultation with interested groups, generally determines the scope of important topics to be included in the environmental review on a proposal; the EPA helps in this scoping process by providing proponent's guidelines on the anticipated key environmental topics and EPA objectives:

- EPA issues guidelines;
- Guidelines focus on anticipated key topics and EPA objectives;
- EPA consults on the guidelines (as appropriate):
 - Proponent
 - Government agencies
 - Community groups
 - Local Government
 - Public

The EPA sets an assessment level based on the significance of the environmental factors associated with the proposal. Information about each development proposal is publicly available in the DEP library and an advertisement in Saturday's *West Australian* newspaper summarises the details of all development proposals together with the level of assessment that has been set on them.

For all proposals referred under Section 38 there is a facility for anyone who disagrees with the level of assessment to appeal to the Minister for the Environment to have it upgraded.

When an EPA report to the Minister for the Environment is clear of appeals, the Minister may apply environmental conditions to the development proposal, in consultation with the decision making authorities. Before imposing environmental conditions on development proposals, the Minister will consult with all other Ministers or agencies who make decisions about whether a project should proceed. When they agree, the Minister announces the conditions which are legally binding.

Only proponents may appeal at this stage and appeals against conditions must be lodged within two weeks of them having been set.

The EPA expects that public involvement will lead to the identification of environmental factors and proposals for their management which will generally enhance the environmental acceptability of proposals. An open public consultation process prior to the referral of a proposal to the DEP would help to identify issues of public interest or concern which can then be addressed in the referral and may assist in reducing appeals against the level of impact assessment.

EPA experience has shown that early consultation with those most likely to be affected by a new development proposal, ensures that environmental factors are known and lines of communication are established. A smoother environmental assessment inevitably follows.