

**DRAFT POLICY ON THE GRANTING, RENEWAL AND
REGULATION OF AQUACULTURE LEASES IN WESTERN
AUSTRALIA**

A Discussion Paper

FISHERIES MANAGEMENT PAPER NO. 215

Department of Fisheries
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Perth WA 6000

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Draft Policy on the Granting, Renewal and Regulation
of Aquaculture Leases in Western Australia

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1. PUBLIC COMMENT SOUGHT

The Minister for Fisheries has the power to issue aquaculture leases under Section 97 of the *Fish Resources Management Act 1994*, although to date none have been issued. With the intention that the Minister will enter into such aquaculture leases, relevant management arrangements have been drafted under which lease applications would be assessed, and leases managed. To that end the following papers have been prepared which are released for comment:

1. *Fisheries Management Paper No 215. Draft Policy on the Granting, Renewal and Regulation of Aquaculture Leases in Western Australia. A Discussion Paper.*
2. *Fisheries Management Paper No. 216. Proposed Fees and Charges for Section 97 Aquaculture Leases: A Discussion Paper.*
3. *Draft Section 97 Aquaculture Lease Application Forms*

Copies of these papers are available on the Department of Fisheries' website at www.fish.wa.gov.au

If you require a copy of the documents, please contact Ms Liz Findlater on 9482 7333.

Public submissions close on these papers on **Tuesday 27 June 2006** (one month from release) and should be sent to:

Pearling and Aquaculture Program
Department of Fisheries WA Locked Bag 39
Cloisters Square Post Office
PERTH WA 6860

FISHERIES MANAGEMENT PAPER

DRAFT POLICY ON THE GRANTING, RENEWAL AND REGULATION OF SECTION 97 AQUACULTURE LEASES IN WESTERN AUSTRALIA

Issued Pursuant to Section 246 of the *Fish Resources Management Act 1994*

2. INTRODUCTION

The Western Australian Government is committed to the development of aquaculture within a framework of ecological sustainability. Consistent with this commitment is the need to ensure that economic returns to the State through aquaculture production are maximised, while minimising any adverse social and ecological impacts of aquaculture development.

A responsibly managed and sustainable aquaculture industry in Western Australia is achievable if the community, industry and Government have a common understanding of the requirements of the aquaculture industry and the administrative processes involved in the assessment of aquaculture applications.

Currently aquaculturists occupy and undertake aquaculture activities by annual licence issued under Sections 92 and 93 of the *Fish Resources Management Act 1994* (FRMA). Aquaculture licences have an annual right of renewal, subject to compliance with the conditions of authorisation.

Section 97 of the FRMA provides the Minister for Fisheries with the power to grant, renew or refuse applications for aquaculture leases over two types of areas:

- (1) coastal waters of Western Australia; and
- (2) an area of land and waters vested in the Minister for that purpose.

More detail on the areas in which aquaculture leases can be granted is provided in Section 4.

Aquaculture leases provide a form of statutory tenure in relation to a site from which licensed aquaculture activities may be undertaken.

The Executive Director of the Department of Fisheries has the function of the assessment of, and the making of recommendations on applications to the Minister for Fisheries for aquaculture leases in respect of an area of land or water vested in the Minister for that purpose, or an area of coastal waters under Section 97 of the FRMA.

Industry bodies have been consulted during the process of developing this draft policy, with the intention that they have input into identifying the factors that may be considered by the Minister for Fisheries and are aware of the issues which are being directed to the Minister's decision making in relation to their interests.

The groups consulted in the initial formulation of this draft policy included relevant Government Departments, the Aquaculture Development Council and the Aquaculture Council of Western Australia.

3. ROLE OF THIS POLICY

This draft policy will set out matters that the Minister responsible for the administration of the Act considers to be of importance in respect of the performance by the Executive Director of this function under the Act.

The final policy produced in relation to leases will provide guidance to the Executive Director and provide a level of certainty and transparency for the industry in relation to the formal processes that are followed in arriving at a decision in these matters.

Matters in this policy are not intended to limit in any way the exercise of statutory discretion in a particular case; the policy provide principles. In formulating recommendations, the Executive Director will exercise discretion based on the merits of each individual case, and may take into account matters not set out in the policy. Furthermore, it is acknowledged that if the matters contained in the policy are inconsistent with a provision of the Act, the Act prevails.

3.1 Objectives of this Policy

The final policy on this matter is intended to assist applicants in the development of applications, and the Executive Director in the consideration of applications, for aquaculture leases under Section 97 of the FRMA.

The policy will indicate to the Executive Director, the aquaculture industry and the community what the Minister considers to be of importance in the assessment, and consultation procedure to be followed, when considering applications for aquaculture leases in respect of an area of land or water vested in the Minister for Fisheries for that purpose, or in the coastal waters of Western Australia and in formulating recommendations in relation to those applications.

The Minister will expect the Executive Director to provide advice and recommendations in relation to applications to grant an aquaculture lease as well as applications to renew an aquaculture lease. If the Executive Director recommends the grant or renewal of an aquaculture lease, the Minister will also expect the Executive Director to recommend terms (including period of the lease), covenants and conditions to be imposed by the Minister on the aquaculture lease. The Minister will consider the Executive Director's recommendations however the Minister retains discretion to accept or refuse any application for grant or renewal of a lease and to impose any term, condition or covenant on a lease.

4. THE NATURE OF A SECTION 97 AQUACULTURE LEASE

4.1 Differences between a Licence and a Lease

The difference between aquaculture leases and aquaculture licences should be noted.

An aquaculture lease provides the lessee with security in the form of statutory tenure (to conduct the specific aquaculture activities) in respect of the land or waters that are the subject of the lease. It provides a non-exclusive right to occupy or use the site for the purposes of aquaculture. Aquaculture leases are site specific. On the other hand, an aquaculture licence authorises the specific aquaculture *activity* and is also site specific.

An aquaculture licence is currently issued for a period of 12 months under Section 92 of the FRMA. Under Section 94, if a person applies to the Executive Director for the renewal of an aquaculture licence, the Executive Director must renew the licence, subject to there being no breach of licence conditions.

Unless the applicant indicates otherwise in the application, a lease granted under Section 97 of the FRMA will vest in the lessee -

1. The exclusive right during the currency of the aquaculture lease to keep, breed, hatch and culture within the leased area the species of fish that are specified in the lease; and
2. The ownership of all fish within the leased area that are kept, bred, hatched or cultured under the lease.

4.2 Relationship between a Licence and a Lease

The FRMA does not specifically require that the licence holder and leaseholder with respect to one area of water be the same entity. Thus, there is nothing in the FRMA that would prohibit the processing of an aquaculture lease application by one entity, accompanied by a licence application by another entity, so long as both parties were agreeable and the activities and species etc were consistent. There is also nothing in the FRMA to prohibit the processing of an application for an aquaculture lease over an area that is currently the subject of an aquaculture licence, made by an entity other than the licensee so long as the licensee has endorsed the application.

It should be noted however that the current structure of the FRMA provides some complexities that may make arrangements where the lessee and licensee are not the same entity problematic and/or undesirable for the licence and/or leaseholder. For example, under Section 97 of the FRMA the leaseholder owns all the fish within the leased area that are kept, bred, hatched or cultured under the lease, and the lease provides the leaseholder the exclusive right to keep, breed, hatch and culture fish within the leased area. Furthermore, under Section 99, if the lease is cancelled or not renewed then the associated licence is, by virtue of that section, cancelled, and vice versa.

It is the Minister's preference that lease applications for new areas are accompanied with competent licence applications in order to facilitate an effective and efficient assessment process. Also, until amendments are made to the current legislation, it is the Minister's preference that a lessee and licensee be the same entities.

However should, in the interim, parties consider entering into an arrangement where the lease and licence holders are not the same entity, the Department wishes to express significant caution given the legal obligations, rights of ownership and points of accountabilities will be as defined under the FRMA, and not as defined under other commercial contracts.

These restrictions will be further considered, with a view to providing as much commercial flexibility while maintaining a clear, appropriate, auditable and accountable compliance framework, within the FRMA Amendment Bill currently under development.

Section 99 provides that an aquaculture lease does not authorise the use of the lease without an aquaculture licence. As such, the use of an aquaculture lease cannot occur until a licence has been obtained. An aquaculture lease can be granted independent of an aquaculture licence, however this will be strictly conditioned to require that a licence is obtained over the site, and the site is being operated within defined timeframes.

Applicants and lessees should also be aware that the effect of this provision of the FRMA is that other users (for example, recreational fishers) may have access to, and undertake lawful activities in the leased area, provided always that such other use does not interfere with those rights of the lessee (described in section 97 FRMA).

5. AREAS IN WHICH A SECTION 97 LEASE CAN BE GRANTED

Relevance of the Land Administrative Act 1997

Mention should also be made of the *Land Administration Act 1997* (LAA). The LAA is the State's legislation providing for the disposal and management of Crown land. The LAA replaces the *Land Act 1933* and sections of some other Acts. The LAA commenced operation on 30 March 1998 and is administered by the Minister for Lands with assistance of the Department of Planning and Infrastructure. The primary objectives of the LAA are to establish a single modern Act for the administration of the Crown estate and to have a comprehensive register of all interests in Crown land (apart from mining and petroleum interests) under the Torrens system as provided by the *Transfer of Land Act 1893*.

Under the LAA the definition of Crown land has been widened and includes all land except alienated (freehold) land. "Land" under the LAA now includes all marine and other waters within the limits of the State and all coastal waters of the State i.e. out to three nautical miles. The LAA was not intended to interfere with other State Acts such as the FRMA and the specific operational responsibilities in relation to Crown waters. As a result, the Minister for Fisheries may grant aquaculture leases – which are not 'interests-in-land' within the meaning of the LAA - in accordance with the Minister's leasing powers in the FRMA (refer below) and – by arrangement - subject to a Memorandum of Understanding between the Department of Fisheries and the Department of Planning and Infrastructure and the relevant provisions of the LAA.

In all other instances, applications for aquaculture leases over unalienated Crown land will be subject to separate Department of Planning and Infrastructure processes. In such cases, to assist in industry development, the Department will seek, wherever possible and appropriate, for land and waters selected by an applicant as an aquaculture site to be vested

in the Minister for Fisheries as a Reserve for aquaculture purposes. This would result in the Minister for Fisheries being empowered to grant an aquaculture lease over the desired site.

Coastal waters vs Lands and Waters Vested in the Minister

Section 97 aquaculture leases may be granted by the Minister for Fisheries only in respect of “an area of land and waters vested in the Minister for that purpose or an area of coastal waters”.

Land and waters may be vested in the Minister for Fisheries in a number of ways.

Section 97 of the FRMA is principally addressing the situation where the Minister for Lands places the care control and management of Crown land that is set aside as a reserve for aquaculture (and possibly other) purposes in the Minister for Fisheries. An example of such “vesting” is the Land Management Order for the Abrolhos Islands Reserve made by the Minister for Lands in favour of the Minister for Fisheries under section 46 of the *Land Administration Act 1997* (LAA). That Land Management Order is in the process of being amended to specifically include aquaculture as a purpose.

Land and waters that are presently placed with a Port Authority pursuant to the *Port Authorities Act 1999* (PAA) may become vested in the Minister for Fisheries by a lease granted by the relevant Port Authority under the PAA for the purpose of the Minister granting leases for aquaculture under section 97 of the FRMA. In taking a lease from the Port Authority the Minister for Fisheries would be exercising his power under section 101A of the FRMA to take a lease for the purposes of that section.

Land and waters may be vested in the Minister for Fisheries under a lease of freehold land, again for the purposes of section 101A of the FRMA and the purpose of granting leases for aquaculture under section 97 of the FRMA. However it is considered that such lease would be unusual as the aquaculturist could be expected to make their own lease arrangements with the landowner or otherwise acquire the land.

The FRMA defines “coastal waters” by reference to the Commonwealth *Fisheries Management Act 1991* (FMA). Applying section 5(1) of the FMA the coastal waters of Western Australia are:

- (a) the part or parts of the territorial sea of Australia that are:
 - (i) within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
 - (ii) adjacent to Western Australia and
- (b) any marine or tidal waters that are on the landward side of that baseline and are adjacent to Western Australia but are not within the limits of Western Australia.

The case of *New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975)* 135 CLR 337 established that the sea boundary of the former Australian colonies ended at the low water mark except for bays, gulfs and other indentations within the limits of a State as at the date of Federation.

As a result of the LAA giving effect to the agreement between the States and Commonwealth that the States have sovereignty over coastal waters, there is now potential for overlap in the jurisdiction of the Minister for Fisheries and the Minister for Lands to grant interests in coastal waters.

Under the LAA “land” is defined in Section 3 as:

- (a) *all land within the limits of the State;*
- (b) *all marine and other waters within the limits of the State;*
- (c) *all coastal waters of the State as defined by section 3(1) of the Coastal Waters (State Powers) Act 1980 of the Commonwealth; and*
- (d) *the sea-bed and subsoil beneath, and all islands and structures within, the waters referred to in paragraphs (b) and (c).*

Section 5(1) of the FMA is in similar terms to section 3(1) of the *Coastal Waters (State Powers) Act 1980*.

“Crown land” is defined in Section 3 of the LAA, subject to certain provisions that are not relevant here, to mean all land except alienated land, (alienated land being land held in freehold).

Crown land therefore includes coastal waters and is administered by the Minister for Lands with the assistance of the Department of Planning and Infrastructure (DPI).

Interests in Crown land may be registered under the provisions of Part 111A and B of the *Transfer of Land Act 1893* (TLA). “Interest” has a defined meaning under the LAA that presently excludes the aquaculture leases to be granted by the Minister for Fisheries under section 97 of the FRMA. However there will be nothing to prevent an aquaculture lease being recorded on the government’s Shared Land Information Platform (SLIP) managed by the Department of Land Information (DLI) to enable people to search SLIP to see what “interests” in the broader sense are recorded in relation to the coastal waters.

The LAA, being a later Act in time to the FRMA, could have restricted or revoked the Minister for Fisheries’ power to grant an aquaculture lease under Section 97 of the FRMA. However the LAA does not have that effect. The Department of Fisheries and DPI operate under a Memorandum of Understanding to ensure that competing interests are not created in coastal waters.

6. LEGISLATIVE FRAMEWORK FOR AQUACULTURE LEASES

Part 8 of the FRMA provides the legal and administrative framework for the Minister and the Department of Fisheries to manage aquaculture in Western Australia. This section of the policy provides the details of the legislation relevant to the grant and management of leases. The following sections provide the policy framework around the application of the FRMA provisions.

Granting and Renewal of a Lease

Section 97 of the FRMA enables the Minister to grant aquaculture leases over land and waters vested in the Minister for aquaculture purposes, or over an area of coastal waters.

A lease must specify the species of fish authorised to be kept, bred, hatched or cultured under the lease.

The FRMA states that a lease may be granted subject to such terms, covenants and conditions as the Minister thinks fit, including the requirement of payment of money to the Minister. The Act also provides that a lease may be varied in the manner provided in the lease.

Section 97 (6) provides the Minister with the power to require security to be given for the observance of any terms, covenants, restrictions or conditions.

Section 99 specifies that an aquaculture lease does not authorise the use of the lease without an aquaculture licence.

The FRMA provides a lease to be granted for an initial term not exceeding 21 years.

The Minister must publish notice of the grant of an aquaculture lease in the Government Gazette. There is no right to apply to the State Administrative Tribunal for review of a decision relating to an aquaculture lease.

A person with an exemption, or not requiring an aquaculture licence, is not eligible to apply for an aquaculture lease for the conduct of the associated activities.

A lease may be renewed by the Minister.

Grants and renewal of aquaculture leases are subject to provisions relating to marine conservation reserves established under the *Conservation and Land Management Act 1984*. This relates to areas of marine conservation reserves in which aquaculture is not permitted, and consultative requirements with respect to the Minister for the Environment, and areas of marine conservation reserves where aquaculture is not prohibited. This matter is explained in more detail in Section 6.1 of this draft policy.

Termination and Variation of Leases

Aquaculture lease holders should be aware of the power of the Minister, pursuant to Section 100 of the FRMA, to terminate the aquaculture lease where the lease area -

- (a) Is no longer being used for the purposes for which the lease was granted; or
- (b) Is being used for purposes other than the purposes for which the lease was granted.

The lease may also be terminated on any other grounds provided in the lease and in the manner provided in the lease. Further detail on the application of this provision is provided in Section 8.2 of this draft policy.

Applicants should also note the provisions of Section 99 of the Act, which, by operation of law -

- (a) Terminates an aquaculture lease where the subject aquaculture licence has been cancelled or not renewed; and
- (b) Cancels an aquaculture licence where the subject aquaculture lease is terminated or expires.

In particular, it should be noted that should an aquaculture licence be cancelled or not renewed (for instance, in the circumstances outlined in Section 143 FRMA), this would result in the termination of the aquaculture lease. The FRMA provides no discretion to the Minister or to the Executive Director in this regard. Section 8.2 of this draft policy provides detail around the administration of these provisions.

Section 97(7) states that a lease may be varied in the manner provided for in the lease. Section 8.2 of this draft policy provides detail around the administration of this provision.

Section 101 Lease

The Minister can also issue leases under Section 101 of the FRMA however this power is intended for the issuing of leases with facilities established by the Minister for the purpose of aquaculture, in particular for aquaculture parks (eg. Broome Tropical Aquaculture Park). This policy does not apply to the grant of a lease under Section 101 of the FRMA.

7. ASSESSMENT OF, AND CONSULTATION WITH REGARD TO APPLICATIONS FOR THE GRANT, RENEWAL OR VARIATION OF AN AQUACULTURE LEASE

The consultative and assessment process for an application for the grant, renewal or major variation of an aquaculture lease involves three fundamental steps:

- Step 1. The first step is to determine if the Minister has enough information and the legislative power to grant a lease relevant to the application.
- Step 2. The second step is to undergo appropriate consultation relevant to the particulars of the lease application.
- Step 3. The third step is to determine the competency and appropriateness of the proposed lease subject to a number of prescribed criteria.

7.1 STEP 1: Required Information and Legislative Power

The following criteria will need to be satisfied in order for the Minister to determine it is possible to assess the lease application for the grant, renewal or variation of a lease.

- (1) The lease application for grant, renewal or variation contains all information necessary and relevant to the assessment of the lease application.
- (2) The lease application is not for an area within a marine nature reserve; or area of a marine park from which aquaculture has been excluded; or other reserve in which aquaculture is not permitted.
- (3) If the application area is within an area of a marine park other than one from which aquaculture is excluded, or a marine management area, the Minister responsible for the administration of the *Conservation and Land Management Act 1984* (CALM Act), has, or is willing to consider, the approval of the lease.
- (4) Satisfy one of the following:
 1. the proposed lease area is within Western Australia coastal waters; or
 2. the proposed lease area is it within an area that is vested in the Minister for Fisheries for aquaculture purposes; or
 3. the proposed lease area is within an area that is not coastal water and vested in the Minister for Fisheries for aquaculture purposes, however the Minister for Lands is of a mind, or is willing to consider the vesting of that land or water in the Minister for Fisheries for aquaculture purposes.

Further information about meeting these criteria is provided below.

7.1.1 The lease application for grant or renewal contains all information necessary and relevant to the assessment of the lease application.

Lease application forms are required to be completed properly and with all necessary information prior to the commencement of assessment of an application. The Minister may refuse to consider an application if the application does not conform with the prescribed requirements.

7.1.2 *The lease application is not for an area with a marine nature reserve; or area of a marine park from which aquaculture has been excluded; or other reserve in which aquaculture is not permitted.*

The *Acts Amendment (Marine Reserves) Act 1997* provides Western Australia with a three-tiered Marine Conservation Reserves system. The three tiers are listed below in order commencing from highest level of protection:

1. marine nature reserve;
2. marine park; and
3. marine management area.

The management and administration of the Marine Conservation Reserves occurs under the CALM Act.

A marine nature reserve provides the highest level of protection and permits very few activities. Marine parks are multi-purpose areas which generally are made up of zones within which various defined activities will be permitted. Marine management areas are discussed below.

An aquaculture lease cannot be granted in an area of a marine nature reserve or an area of a marine park from which aquaculture is excluded. Applications for the grant, renewal or variations of leases within such areas will not be assessed.

Note also that if an aquaculture licence that is not attached to a lease and is in an area that subsequently becomes a marine nature reserve or marine park exclusion zone, the licence can only be renewed for an area outside the marine nature reserve or exclusion zone. In such circumstances provisions of the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* relating to compensation may become relevant.

Applicants should contact the Department of Conservation and Land Management (CALM) to determine if the area of interest is within a Marine Conservation Reserve or a proposed Marine Conservation Reserve.

7.1.3 *If the proposed lease area (or area subject to renewal) is within an area of a marine park other than one from which aquaculture is excluded, or a marine management area, the Minister responsible for the administration of the Conservation and Land Management Act 1984 (CALM Act), has, or is willing to consider, the approval of the lease.*

An applicant who does not hold an aquaculture licence who seeks an aquaculture lease in:

- (a) An area of marine park (other than one from which aquaculture is excluded under section 13B of the CALM Act) or
- (b) An area of a marine management area;

can only be granted the aquaculture lease by the Minister for Fisheries if the Minister responsible for the administration of the CALM Act (currently Minister for the Environment) also approves. Similarly an applicant for an aquaculture licence relating to the same area will also require the approval of the Minister for the Environment.

Applications for variations will also be referred to the Minister for the Environment for approval.

In summary, with the exception of aquaculture leases for existing aquaculture sites, no new aquaculture licences or aquaculture leases for aquaculture in permissible areas of marine reserves will be granted or renewed without the approval of the Minister responsible for the administration of the CALM Act (Minister for the Environment). This requirement results from sections 92, 98 and 98A of the FRMA.

The Minister for the Environment will be requested to consider the application when the application is deemed complete, and indicate that he will be willing to consider the application for approval at the point at which it has been fully assessed under this policy.

As above, applicants should contact CALM to determine if the area of interest is within a Marine Conservation Reserve or a proposed Marine Conservation Reserve.

7.1.4 The proposed lease area (or area subject to renewal) is within Western Australia coastal waters

The Minister has the power to grant an aquaculture lease over coastal waters not already set aside for or being used for other incompatible purposes e.g. mining/petroleum. As such if the subject area for the grant, renewal or variation is deemed to be coastal waters then this criteria is satisfied.

7.1.5 The proposed lease area (or area subject to renewal) is within an area that is vested in the Minister for Fisheries for aquaculture purposes.

The Minister has the power to grant, renew or vary an aquaculture lease over lands or waters vested in him for the purposes of aquaculture. As such if the subject area is in an area vested in the Minister for Fisheries for aquaculture purposes then this criteria is satisfied.

7.1.6 The proposed lease area (or area subject to renewal) is within an area that is not vested in the Minister for Fisheries for aquaculture purposes, however the Minister for Lands is of a mind to vest that land or water in the Minister for Fisheries for aquaculture purposes.

If the proposed lease area is within an area that would need to be vested in the Minister for Fisheries, it will need to be determined that the Minister for Lands, or other responsible Minister, has, or is willing to consider the approval of the vesting of that area in the Minister for Fisheries for the purpose of aquaculture.

In relation to other waters, discussions have commenced with the various Port Authorities and other relevant agencies to facilitate granting aquaculture leases for existing aquaculture sites in waters controlled by these agencies.

Port Authority Controlled Waters

The Department of Fisheries will continue to develop proposals for head leases to the Minister for Fisheries as a way to secure tenure for aquaculture ventures within Port Authority waters. The Minister for Fisheries may then sub-lease the lease area or portions

of the area to lessees. This arrangement may attract particular fees given the potential need for upkeep or maintenance of particular aquaculture lease areas.

The Minister for Fisheries will, as deemed necessary, develop proposals for negotiating head lease agreements with the various Port Authorities, or other relevant agencies, for existing and future aquaculture sites or other areas.

Applicants should contact the Department of Planning and Infrastructure to determine if the area of interest is within Port Authority waters.

7.2 STEP 2: Consultation in Relation to the Grant, Renewal and Variation of a Section 97 Aquaculture Lease

Ministerial Policy Guideline No. 8, 'Assessment of Applications for Authorisations for Aquaculture and Pearling in Coastal Waters of Western Australia' (MPG No.8), specifies the consultative process required for applications for aquaculture and pearling authorisations (licences leases) in coastal waters. MPG No.8 will continue to apply in parallel with this policy, to applications in *coastal waters*. The exception to this is for lease applications for areas that are already licensed. In these cases a reduced level of consultation will be required – as detailed below.

Consultation around applications for variations of leases in coastal waters will also be dealt with in accordance with MPG No.8. The distinction between minor and major variations will also be as per the MPG No.8.

The consultation requirement for lease applications that are for areas of 'lands and waters vested in the Minister for Fisheries' is also outlined below.

7.2.1 No licence: lease application for coastal waters

All applications for new aquaculture licences to engage in aquaculture activities in coastal waters are assessed in accordance with MPG No.8.

Applications for an aquaculture lease in coastal waters over a site that is not already subject to an aquaculture licence will be assessed in the same manner. This process includes referring applications to relevant decision-making authorities, other involved agencies and relevant interest groups. Applications will be advertised for public comment.

Where an application for a lease and a licence are submitted concurrently, separate applications (for an aquaculture licence and aquaculture lease) will be required, however the assessment process will also be undertaken concurrently.

Where a lease application is received with no associated aquaculture licence application, the assessment processes will obviously be undertaken separately. As noted previously, it is the Minister's preference that for new proposals, the applications for the lease and the licence are submitted concurrently.

7.2.2 No licence: lease application for land or waters vested in the Minister for Fisheries

Applications for aquaculture leases in land or water (but not coastal water) “vested” in the Minister for aquaculture purposes will be assessed in the same way as applications for aquaculture licences relevant to that land or water – that is, the applications will be assessed by the Department of Fisheries in liaison with relevant Government agencies.

Again, where an application for a lease and a licence are submitted concurrently, separate applications (for an aquaculture licence and aquaculture lease) will be required, however the assessment process will also be undertaken concurrently.

Where a lease application is received with no associated aquaculture licence application, the assessment processes will obviously be undertaken separately. As noted previously, it is the Minister’s preference that for new proposals, the applications for the lease and the licence are submitted concurrently.

7.2.3 Currently licensed: lease applications for coastal waters and land/waters vested in the Minister for Fisheries

All existing aquaculture licensees in coastal waters are authorised by their licence to conduct aquaculture activities in or over a specific site or sites. Aquaculture licences have been issued by the Executive Director following assessment of the proposal by relevant Government agencies (and for sites in coastal waters, since December 1997, a full public consultation process) especially in relation to the suitability of the proposed site and potential ecological impact.

In relation to applicants for the grant (and subsequently renewal) of aquaculture leases over sites relevant to existing aquaculture licences, the consultation requirements will be limited to:

- Consultation with any registered interest holders in the relevant site (eg mining or petroleum interests);
- Consultation with the Aquaculture Council of Western Australia in relation to whether the proposed lease is in the better interests of the aquaculture industry;
- Compliance with notification procedures under the relevant provisions of the *Native Title Act 1993* (Cwth); and
- Consultative requirements in respect of Marine Conservation Reserves under Department of Fisheries, CALM and other Environmental legislation.

Note that the review of Ministerial Policy Guideline No.8 will also take account of recommendations from the recent Aboriginal Fishing Strategy as they are relevant to consultation around applications for aquaculture authorisations.

The Department of Fisheries will be responsible for the referral and receipt of comment from these groups but applicants are encouraged to undertake consultation with these groups prior to the formal process.

7.2.4 Consultation requirements in relation to lease renewals in coastal waters or lands vested in the Minister for Fisheries

Applications for lease renewals will be subject to:

- Consultation with any registered interest holders in the relevant site (eg mining or petroleum interests);
- Consultation with the Aquaculture Council of Western Australia in relation to whether the proposed lease is in the better interests of the aquaculture industry;
- Compliance with notification procedures under the relevant provisions of the *Native Title Act 1993* (Cwth);
- Consultative requirements in respect of Marine Conservation Reserves under Department of Fisheries, CALM and other Environmental legislation;
- Aquaculture Council of Western Australia;
- Pearl Producers Association;
- Conservation Council of Western Australia;
- Recreational Fishing Advisory Committee; and
- Western Australian Fishing Industry Council.

7.2.5 Consultation requirements in relation to lease variations in lands vested in the Minister for Fisheries

All applications for variations will be referred to relevant decision making authorities and involved agencies which may include by may not be limited to:

- the Department of Planning and Infrastructure
- the relevant Local Government Authority
- the Department of Environment
- the CALM
- the Department of Commerce and Trade

Applications for major variations will also be referred to the following groups for comment:

- the Aquaculture Council of Western Australia;
- the Pearl Producers Association;
- the Conservation Council of Western Australia;
- the Recreational Fishing Advisory Committee; and
- the Western Australian Fishing Industry Council.

7.2.6 Consultation requirements in relation to lease variations in coastal waters

Applications for variations of leases in coastal waters will be dealt with in accordance with MPG No.8.

7.2.7 Relevance of the consultation process to the assessment of the lease application

The following Section 8 outlines the criteria for assessment of the lease application. The outcomes of the consultation process will be a key input into the assessment of the lease application in accordance with the criteria.

7.3 STEP 3: Assessment Against Criteria

Having ensured that the application for the grant, renewal or variation contains all reasonable information required to enable a decision, and that the Minister has the legislative power to grant or renew a lease, assessment of the application will proceed in accordance with the assessment criteria.

These criteria have been determined by the Minister to be important matters to be considered by the Executive Director in:

- The performance of the Executive Director’s functions in processing applications for grant or renewal of aquaculture leases;
- Determining whether to recommend to the Minister to grant or renew an aquaculture lease; and
- The assessment of related matters (such as recommending terms, conditions and covenants for imposition by the Minister on the aquaculture lease).

Grant or Renewal

Those matters to be considered by the Executive Director in arriving at the recommendations to the Minister in relation to the grant and/or renewal of an aquaculture lease:

- (a) The person applying is a fit and proper person to hold such an aquaculture lease;
- (b) It is in the better interests of the aquaculture industry to grant or renew the aquaculture lease;
- (c) History and/or demonstrated ability to effectively use the site for aquaculture; and
- (d) The proposed purpose of the lease is unlikely to affect other fish or the aquatic environment.

Variation

Those matters to be considered by the Executive Director in arriving at the recommendations to the Minister in relation to an application to vary an aquaculture lease:

- (a) It is in the better interests of the aquaculture industry to vary the aquaculture lease;
- (b) History and/or demonstrated ability to effectively use the site for aquaculture; and
- (c) The proposed variation of the lease is unlikely to affect other fish or the aquatic environment.

7.3.1 *The person applying is a fit and proper person to hold such an aquaculture lease*

The matters considered to be of relevance when determining whether or not a person is 'fit and proper' to hold a lease take into account the technical knowledge, experience and skills, honesty and ability of the applicant to manage an aquaculture lease.

In addition to these criteria, in the case of a lease application, the Executive Director will also take into account any previous history of the exercise of the privilege of using the Crown estate by the applicant and/or the principles of the company where such entity is the applicant. This will include payment records under other tenancy agreements and a credit check of the applicant and the officeholders and directors.

The honesty and ability of the lease applicant will be relevant, as will be the ability of the lease applicant to manage a lease.

Where the applicant is a body corporate the Executive Director may consider the technical knowledge and skills, ability, honesty and criminal history of the officeholders and directors of the applicant.

The Minister does not expect that all applicants for the grant or renewal of an aquaculture lease will personally hold the requisite technical skills or knowledge to conduct the aquaculture activities, unless that person also holds the licence. In this case, the technical skills and knowledge of the person will be assessed under the application for the aquaculture licence.

On a site not currently licensed and where the lease applicant is not intending on operating the site, the Minister will expect the person to demonstrate that they are capable of identifying an appropriate entity to apply for a licence to operate the site within prescribed timeframes (refer to Section 8.3 for more information).

Where the application is for a variation of an existing lease, this criteria will be deemed to have been satisfied.

7.3.2 *It is in the better interests of the aquaculture industry to grant or renew the aquaculture lease*

The Minister for Fisheries needs to be satisfied that the grant or renewal of the relevant aquaculture lease is in the better interests of the aquaculture industry in Western Australia. In formulating a recommendation, the Executive Director may, amongst other matters, take into account the following:

- (a) The appropriateness of the species, size of lease, and other relevant factors to the viability of the proposed purpose;
- (b) The impact the grant or renewal may have on other stakeholders with an interest in or adjacent to the area of land or water;
- (c) The social and economic or other industry benefits that can be gained for the aquaculture industry;
- (d) Any potential negative impact to the aquaculture industry that may result;
- (e) The cumulative impact that might result from the granting of the lease; and
- (f) Comment from the peak bodies and advisory committees.

In considering the above in relation to operations that are already licensed or leased, the Executive Director will take into account any information resulting from the operations of that authorisation to date.

7.3.3 History and/or demonstrated ability to effectively use the site for aquaculture

Existing Aquaculture Licence Holders

Subject to the provisions of the FRMA and any relevant guidelines, aquaculture licences issued under the FRMA confer upon licensees an annual statutory right to renew their licence. Aquaculturists may therefore (generally) expect their licences to be renewed from year to year by the Executive Director subject to the provisions of the FRMA. The Minister does not consider it appropriate however to simply allow existing licensees to obtain aquaculture leases without some review of their performance under their licence on the site and of their compliance with licence conditions, to determine whether effective use is being made of the site.

Effective use of the site for aquaculture activities means that the licensee has engaged in the licensed aquaculture activity in respect of the species nominated in the lease application in a satisfactory manner, including using the site to its appropriate production capacity.

To enable a determination to be made in respect to this criterion, a review of the applicant's performance on the site and/or skills, experience, plans and resources, as may be relevant in the circumstances, will be conducted.

The Minister foresees that existing aquaculture licensees may be granted an aquaculture lease over the licence site only if a "performance" review by the Executive Director results in the Executive Director recommending the grant or renewal of the aquaculture lease.

The performance review should take into account matters such as:

- Level of infrastructure development on the site;
- Level of production (value and/or quantity) as evidenced on production returns;
- Compliance with any development plan submitted to the Department;
- Results of any trial or research work on the site;
- Compliance with any agreed individual or industry performance standards; and
- Compliance with licence conditions.

Applicants for sites that are not currently licensed

In the case of a site at which aquaculture activities have not previously been authorised by way of aquaculture licence, the applicant will need to demonstrate to the Executive Director that effective use will be made of the site for aquaculture activities within a reasonable period.

There are two possible scenarios in relation to this:

- The application for a lease, *without* an associated licence application; and
- The application for a lease, *with* an associated licence application.

In the case where a licence application has been lodged, the applicant may be the same or a second entity. Where the lease and licence applicants are not the same entity, written endorsement of the respective applications must be provided by each.

In either case, an assessment of the applicant's resources, experience, history and plans, and the skills held by the applicant personally and by the applicant's officeholders and key staff, will be undertaken.

Ultimately the applicant will need to convince the Executive Director that effective use will be made of the site for aquaculture activities within a reasonable period. This will be linked to the fit and proper person criterion assessment.

The lease will be conditioned with performance criteria (refer to above). Where a lease application is not accompanying the licence application, any resultant lease will be conditioned with timeframes by which a licence application must be made and subsequent operations commenced. As guidance, the Minister expects that a licence application will be received within 12 months, and that operations will have commenced within 28 months.

The Department of Fisheries has commenced the development of a paper outlining expectations around performance on aquaculture licence and lease sites. This paper will be the subject of future consultation with industry and other stakeholders and will ultimately provide a clear framework around the requirements to meet the above test.

7.3.4 The proposed purpose of the lease is unlikely to affect the fish or the aquatic environment

The assessment of an application for an aquaculture licence will consider the environmental sustainability of the proposed activity, in particular that the activities conducted under the licence are unlikely to adversely affect other fish or the aquatic environment.

Where a lease application precedes a licence application, the assessment of the activity itself cannot be assessed prior to the grant of the lease. It is appropriate however to undertake an assessment of the purpose of the proposed aquaculture lease relative to the proposed site and issues that might be relevant to the aquaculture of the nominated species at that site. This is to ensure that a lease is not granted for the aquaculture of a nominated species for which an aquaculture licence would not be granted on environmental grounds.

This assessment will involve consideration of the proposed purpose, the proposed lease location and the receipt of advice from other relevant parties.

Details around environmental management of the site will be deferred to the licence assessment process and will be contained in the aquaculture licence.

Where a lease application is for an existing licensed site, the licence application process will have already resolved these issues, and as such this criterion will be deemed to have been addressed.

8. RECOMMENDATIONS TO THE MINISTER

On completion of an assessment of an application for the grant or renewal of an aquaculture lease – taking into account the matters of importance as determined by the Minister and outlined above – the Executive Director will prepare a ‘Statement of Reasons for the consideration of the Minister for Fisheries’. The Statement of Reasons will include a recommendation to either grant or refuse to grant a lease (and associated licence where relevant). Where the Statement of Reason recommends the approval of the lease application, it will also contain recommended conditions of the lease. The Executive Director will prepare a proposed Deed of Lease (Deed) to be forwarded to the Minister along with the Statement of Reasons. In the situation where both an aquaculture licence and lease are being applied for, the Statement of Reasons for the licence and lease will be prepared and progressed concurrently.

A draft aquaculture lease Deed has been prepared and will be used as the template for all Deeds, bearing in mind that site specific, and other lease specific terms, conditions and covenants will also be included as necessary.

The Statement of Reasons and proposed Deed will be referred to the applicant advising that it will be referred to the Minister 10 days from the time of forwarding unless:

- the applicant advises that it can be forwarded immediately, or
- the applicant wishes to submit a comment or response to the Statement of Reasons.

This process will give applicants an opportunity to respond where the determination is proposed to be negative, and where the applicant disagrees with the proposed conditions. The Executive Director will consider any submission made and where the Executive Director does not adopt the comments made by the applicant, the applicant’s submission will be provided to the Minister with the Statement of Reasons.

The Minister for Fisheries will attempt to make a determination on the application for lease within 28 days of the Statement of Reasons being received from the Executive Director. Where matters are likely to prevent the timeframe being met, the Minister will notify the applicant of an alternative timeframe.

As soon as possible after the Minister for Fisheries has advised the Executive Director of the Minister’s decision on an application, the Executive Director should provide advice to the applicant.

The Executive Director is to advertise the grant of an aquaculture lease (and associated licence as appropriate) in accordance with Section 97 of the FRMA.

The lease will be referred to the Stamp Office where the deed is required to be lodged with a duty in respect of the deed, currently \$20.00, to be paid by the lessee.

In accordance with Ministerial Policy Guideline No 8, the Executive Director is to provide all persons or bodies who made a submission or submissions on an application for an aquaculture lease with notice of the Minister’s decision.

9. OTHER MANAGEMENT GUIDELINES

9.1 Duration of Leases and Renewal

Section 97(4) of the FRMA empowers the Minister to grant aquaculture leases for periods of up to 21 years and provides for aquaculture leases to be renewed from time to time for periods not exceeding 21 years. This does not mean that applicants for leases will be automatically granted aquaculture leases for 21 years.

Initial aquaculture lease grants for new aquaculture developments may be of a shorter term than 21 years with rights of renewal for longer term leases tied to initial performance criteria being met. In general, the following schedule of lease terms will be adopted:

- Initial term of 5 years;
- A Renewal of 21 years;
- A further renewal of 21 years.

Having said this, the recommended duration of the term of the lease should consider site-specific matters, including such things as:

- comments arising from Ministerial Policy Guideline No. 8; and
- the site's situation in a Marine Conservation Reserve or a proposed Marine Conservation Reserve.

Furthermore terms under which land and water are vested in the Minister may preclude an option to renew.

The lessor can apply to the Minister to renew the lease no more than 24 months and no less than 6 months prior to the expiry of the term.

9.2 Grounds and Process for Termination or Variation of a Lease

Aquaculture leases may be issued for periods of up to 21 years. This is a substantial period of time during which issues may arise that were not envisaged at the time the aquaculture lease was granted. This may mean that the terms of the aquaculture lease will need to be varied before the aquaculture lease expires.

Section 97(7) of the FRMA provides that an aquaculture lease may be varied in the manner provided in the aquaculture lease. Section 100 states that a lease may be terminated on any other grounds provided in the lease and in the manner provided in the lease.

It is therefore proposed that all aquaculture leases contain a provision that will enable the terms of the aquaculture lease to be varied (by either the Minister or the lessee), and a provision that will enable the lease to be terminated, on the basis that certain grounds have been met.

Administrative guidelines around these terms are set out below:

Lease Variation

A lease variation may be proposed by the lessee or by the Minister. Consultation around lease variations will be undertaken in accordance with Ministerial Policy Guideline No. 8 for all Section 97 aquaculture leases in coastal waters, and in accordance with Section 6.2.5 for lease in areas vested in the Minister for Fisheries.

Case specific grounds may be negotiated for particular leases however, in general the following will be grounds to vary a lease:

- If (under Section 100 (2)) it has been determined that significant and irreparable environmental damage may occur as a result of the aquaculture operations associated with the lease if a variation does not occur; and
- If (under Section 100 (2)) both parties agree to vary the lease in a defined manner.

If the Minister proposes to vary the aquaculture lease the following process is to be followed:

- (a) The lessee will be advised by notice in writing of the proposed variation. The lessee will then have 21 days to lodge written comment about the Minister's proposal. The Minister will take into account any comment made by the lessee before deciding whether to proceed with the proposal to vary the terms of the lease.
- (b) If the lessee wishes to vary the aquaculture lease, then the lessee must make application in writing to the Minister. The aquaculture lessee may be required to provide further information to enable the Minister to decide whether to agree to the variation. The aquaculture lessee may also be required to pay a fee.
- (c) The Minister may publish all variations to leases in the Government Gazette.

Lease Termination

Case specific grounds may be negotiated for particular leases however, in general the following will be grounds to terminate a lease:

- If (under Section 99 of the FRMA) the associate licence has been cancelled or not renewed; or
- If (under Section 100 (1a)) the lease is no longer being used for the purposes for which the lease was granted; or
- If (under Section 100 (1b)) the lease is being used for purposes other than the purposes for which the lease was granted; or
- If (under Section 100 (2)) any of the terms, conditions, covenants or obligations of the lease have been breached; or
- If (under Section 100 (2)) it has been determined that significant and irreparable environmental damage has or will occur as a result of the aquaculture operations associated with the lease; or
- If an insolvency event occurs in respect of the Lessee; or
- The Guarantee or the indemnity requirements ceases to be fully enforceable against the Guarantor; or
- If the Guarantor is an individual, if the Guarantor dies, is declared insane or is declared bankrupt;
- The occurrence of any other Event of Default as defined in the Deed.

If the Minister proposes to terminate the aquaculture lease, the lessee will be advised by notice in writing of the proposed termination. The lessee will have 21 days to lodge written comment about the Minister's proposal and show cause in relation to why the Minister should not terminate the lease. The Minister will take into account any comment made by the lessee before deciding whether to proceed with the proposal to terminate the lease.

Industry parties are again reminded of the consequences of Section 99 of the FRMA, that the cancellation or non-renewal of a lease or licence will result in the termination of its associated authorisations. Where a licence or lease is not being renewed, the Department of Fisheries will notify any second entity.

9.3 Marking of Lease Boundaries

Ensuring that lease boundaries are clearly marked for day and night navigation is essential for the safety of other users of the waters, and also provides additional protection by reducing the possibility of damage to floats, lines, markers etc. by unwary boaters.

The necessity of the markers and lights is relevant where infrastructure is deployed and/or activities are being undertaken on the site, and which therefore creates navigational hazards. The leaseholder will be held responsible for the good order of the site in all regards including the appropriate deployment and maintenance of marking and lighting equipment. The lease deed will be constructed to place responsibility for these matters with the lessee.

Accordingly, the marking of the aquaculture lease areas in accordance with the Department of Fisheries' requirements outlined in the document called "Standardised Lease Marking Incorporating Prescriptive Requirements for Different Leases" (as amended from time to time), or as otherwise specified by the Minister, will be a condition of all aquaculture leases.

9.4 Security/Indemnity/Insurances

As a general rule, the lease will

- Provide that there will be by deposit of bond with the Minister or bank guarantee at the applicant's election. The purpose of the bond or bank guarantee is to provide the Minister with comfort in respect of payment of the rent and other monies due under the lease and rehabilitation of the site on expiry or earlier termination of the lease.
- The lessee will indemnify and hold harmless the lessor (or head lessor where relevant) and keep the lessor indemnified from and against all claims, demands, actions, and proceedings, judgements, orders, costs, losses, damages and expenses whatsoever incurred by the lessor.
- Require that the lessee has in place appropriate public risk insurance, property insurance, and other relevant insurance policies.

Where the lessee is a company, the Minister may also require that a guarantee or indemnity is put up by the directors of the company.

9.5 Sub-Leasing Not Recognised

Currently under the FRMA, there is no provision for subletting/subleasing. Accordingly, all rights and obligations in relation to any granted aquaculture lease will be entirely the responsibility of the person holding both the aquaculture lease and aquaculture licence.

As referred to above in Section 3, the FRMA creates complexities where the licence and lease holder are not the same entity. Given that the FRMA provides no capacity to recognise a sublease arrangement and that all ownership rights in the eyes of the law will be that of the original lessor, the Department would advise aquaculturists against any such commercial arrangements occurring.

Note again that these restrictions will be further considered, with a view to providing as much commercial flexibility while maintaining a clear, appropriate, auditable and accountable compliance framework, within the FRMA Amendment Bill currently under development.

9.6 Transfer of Leases and Licences

The FRMA is silent on the matter of lease transfers other than giving the power to make regulations relating to transfers. No regulations currently exist.

As the FRMA does not expressly empower the “transfer” of an aquaculture lease directly from the “transferor” to the “transferee” it is not possible without a regulation to enact a transfer.

Until such a regulation is introduced, the Executive Director may approve the transfer of an aquaculture licence to a third party, subject to compliance with the FRMA and the transferee complying with “fit and proper person” guidelines. Accordingly, when the aquaculture licence transfer has been approved, the lease agreement between the transferor and the Minister will be terminated and the Minister may enter into a new lease agreement with the new licensee.

9.7 Annual Aquaculture Lease Rental Fees

The Department of Fisheries is currently undertaking a review of marine lease fees and is establishing a criteria based system to assess the value of marine lease rentals. A separate paper has been prepared by the Department of Fisheries which outlines the framework for lease fees.

Note that in addition to annual lease fees, there may also be additional fees in particular circumstances such as where the Minister for Fisheries engages with a third party head lessor for a particular site and attracts upkeep or maintenance costs as part of that agreement.

Once determined, lease fees will be set in the *Fish Resources Management Regulations 1995*, which will also include a provision for increases, in particular with the Cost Price Index. It is anticipated that the annual lease rental fee will be payable either as a lump sum, or in instalments. Interest will apply to payments where the payment is not paid within 14 days after the due date.

FISHERIES MANAGEMENT PAPERS

- No. 1** The Report of the Southern Western Australian Shark Working Group. Chairman P. Millington (1986)
- No. 2** The Report of the Fish Farming Legislative Review Committee. Chairman P. Rogers (1986)
- No. 3** Management Measures for the Shark Bay Snapper 1987 Season. P. Millington (1986)
- No. 4** The Esperance Rock Lobster Working Group. Chairman A. Pallot (1986).
- No. 5** The Windy Harbour - Augusta Rock Lobster Working Group. Interim Report by the Chairman A. Pallot (1986)
- No. 6** The King George Sound Purse Seine Fishery Working Group. Chairman R. Brown (1986)
- No. 7** Management Measures for the Cockburn Sound Mussel Fishery. H. Brayford (1986)
- No. 8** Report of the Rock Lobster Industry Advisory meeting of 27 January 1987 . Chairman B. Bowen (1987)
- No. 9** Western Rock Lobster Industry Compensation Study. Arthur Young Services (1987)
- No. 10** Further Options for Management of the Shark Bay Snapper Fishery. P. Millington (1987)
- No. 11** The Shark Bay Scallop Fishery. L. Joll (1987)
- No. 12** Report of the Rock Lobster Industry Advisory Committee to the Hon Minister for Fisheries 24 September 1987. (1987)
- No. 13** A Development Plan for the South Coast Inshore Trawl Fishery. (1987)
- No. 14** Draft Management Plan for the Perth Metropolitan Purse Seine Fishery. P. Millington (1987)
- No. 15** Draft management plan, Control of barramundi gillnet fishing in the Kimberley. R. S. Brown (1988)
- No. 16** The South West Trawl Fishery Draft Management Plan. P. Millington (1988).
- No. 17** The final report of the pearling industry review committee . F.J. Malone, D.A. Hancock, B. Jeffriess (1988)
- No. 18** Policy for Freshwater Aquaculture in Western Australia. (1988)
- No. 19** Sport Fishing for Marron in Western Australia - Management for the Future. (1988)
- No. 20** The Offshore Constitutional Settlement, Western Australia 1988.
- No. 21** Commercial fishing licensing in Western Australia. (1989)
- No. 22** Economics and marketing of Western Australian pilchards. SCP Fisheries Consultants Pty Ltd (1988)
- No. 23** Management of the south-west inshore trawl fishery. N. Moore (1989)
- No. 24** Management of the Perth metropolitan purse-seine fishery. N. Moore (1989)
- No. 25** Rock Lobster Industry Advisory Committee report to the Minister for Fisheries November 1988. (1989)
- No. 26** A report on marron fishing in Western Australia. Chairman Doug Wenn MLC (1989)
- No. 27** A review of the Shark Bay pearling industry. Dr D.A.Hancock, (1989)
- No. 28** Southern demersal gillnet and longline fishery. (1989)
- No. 29** Distribution and marketing of Western Australian rock lobster. P. Monaghan (1989)
- No. 30** Foreign investment in the rock lobster industry. (1989)
- No. 31** Rock Lobster Industry Advisory Committee report to the Hon Minister for Fisheries September 1989. (1989)
- No. 32** Fishing Licences as security for loans. P. Rogers (1989)
- No. 33** Guidelines for by-laws for those Abrolhos Islands set aside for fisheries purposes. N. Moore (1989)
- No. 34** The future for recreational fishing - issues for community discussion. Recreational Fishing Advisory Committee (1990)
- No. 35** Future policy for charter fishing operations in Western Australia. P. Millington (1990)
- No. 36** Long term management measures for the Cockburn Sound restricted entry fishery. P. Millington (1990)

- No. 37** Western rock lobster industry marketing report 1989/90 season. MAREC Pty Ltd (1990)
- No. 38** The economic impact of recreational fishing in Western Australia. R.K. Lindner, P.B. McLeod (1991)
- No. 39** Establishment of a registry to record charges against fishing licences when used as security for loans. P. Rogers. (1991)
- No. 40** The future for Recreational Fishing - Forum Proceedings. Recreational Fishing Advisory Committee (1991)
- No. 41** The future for Recreational Fishing - The Final Report of the Recreational Fishing Advisory Committee. Recreational Fishing Advisory Committee (1991)
- No. 42** Appendix to the final report of the Recreational Fishing Advisory Committee. (1991)
- No. 43** A discussion of options for effort reduction. Southern Gillnet and Demersal Longline Fishery Management Advisory Committee (1991)
- No. 44** A study into the feasibility of establishing a system for the buy-back of salmon fishing authorisations and related endorsements. (1991)
- No. 45** Draft Management Plan, Kimberley Prawn Fishery. (1991)
- No. 46** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister (1992)
- No. 47** Long term management measures for the Cockburn Sound restricted entry fishery. Summary of submissions and final recommendations for management. P. Millington (1992)
- No. 48** Pearl oyster fishery policy guidelines (Western Australian Pearling Act 1990) Western Australian Fisheries Joint Authority (1992)
- No. 49** Management plan, Kimberley prawn fishery. (1992)
- No. 50** Draft management plan, South West beach seine fishery. D.A. Hall (1993)
- No. 51** The west coast shark fishery, draft management plan. D.A. Hall (1993)
- No. 52** Review of bag and size limit proposals for Western Australian recreational fishers. F.B. Prokop (May 1993)
- No. 53** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries. (May 1993)
- No. 54** Rock Lobster Industry Advisory Committee, Management proposals for 1993/94 and 1994/95 western rock lobster season (July 1993)
- No. 55** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries on management proposals for 1993/94 and 1994/95 western rock lobster seasons (September 1993)
- No. 56** Review of recreational gill, haul and cast netting in Western Australia. F. B. Prokop (October 1993)
- No. 57** Management arrangements for the southern demersal gillnet and demersal longline fishery 1994/95 season. (October 1993)
- No. 58** The introduction and translocation of fish, crustaceans and molluscs in Western Australia. C. Lawrence (October 1993)
- No. 59** Proceedings of the charter boat management workshop (held as part of the 1st National Fisheries Manager Conference). A. E. Magee & F. B. Prokop (November 1993)
- No. 60** Bag and size limit information from around Australia (Regulations as at September 1993) F. B. Prokop (January 1993)
- No. 61** Economic impact study. Commercial fishing in Western Australia Dr P McLeod & C McGinley (October 1994)
- No. 62** Management arrangements for specimen shell collection in Western Australia. J. Barrington, G. Stewart (June 1994)
- No. 63** Management of the marine aquarium fish fishery. J. Barrington (June 1994)
- No. 64** The Warnbro Sound crab fishery draft management plan. F. Crowe (June 1994)
- No. 65** Not issued
- No. 66** Future management of recreational gill, haul and cast netting in Western Australia and summary of submissions to the netting review. F.B. Prokop, L.M. Adams (September 1994)
- No. 67** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Evaluation of management options Volume 1. B. K. Bowen (September 1994)

- No. 68** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Economic efficiency of alternative input and output based management systems in the western rock lobster fishery, Volume 2. R.K. Lindner (September 1994)
- No. 69** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) A market-based economic assessment for the western rock lobster industry, Volume 3. Marec Pty Ltd (September 1994)
- No. 70** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Law enforcement considerations, Volume 4. N. McLaughlan (September 1994)
- No. 71** The Rock Lobster Industry Advisory Committee Chairman's Report, October 1994, The Western Rock Lobster Fishery - Management proposals for the 1994/95 and 1995/96 seasons (November 1994)
- No. 72** Shark Bay World Heritage Area draft management plan for fish resources. D. Clayton (November 1994)
- No. 73** The bag and size limit review: new regulations and summary of submissions. F. Prokop (May 1995)
- No. 74** Report on future management options for the South West trawl limited entry fishery. South West trawl limited entry fishery working group (June 1995)
- No. 75** Implications of Native Title legislation for fisheries management and the fishing industry in Western Australia. P. Summerfield (February 1995)
- No. 76** Draft report of the South Coast estuarine fishery working group. South Coast estuarine fishery working group. (February 1995)
- No. 77** The Offshore Constitutional Settlement, Western Australia. H. Brayford & G. Lyon (May 1995)
- No. 78** The Best Available Information - Its Implications for Recreational Fisheries Management. Workshop at Second National Fisheries Managers Conference, Bribie Island Queensland. F. Prokop (May 1995)
- No. 79** Management of the Northern Demersal Scalefish Fishery. J. Fowler (June 1995)
- No. 80** Management arrangements for specimen shell collection in Western Australia, 1995. J. Barrington & C. Campbell (March 1996)
- No. 81** Management Options (Discussion Paper) for the Shark Bay Snapper Limited Entry Fishery. Shark Bay Snapper Limited Entry Fishery Working Group, Chaired by Doug Bathgate (June 1995)
- No. 82** The Impact of the New Management Package on Smaller Operators in the Western Rock Lobster Fishery R. Gould (September 1995)
- No. 83** Translocation Issues in Western Australia. Proceedings of a Seminar and Workshop held on 26 and 27 September 1994. F. Prokop (July 1995)
- No. 84** Bag and Size Limit Regulations From Around Australia. Current Information as at 1 July 1995. Third Australasian Fisheries Managers Conference, Rottneest Island. F. Prokop (July 1995)
- No. 85** West Coast Rock Lobster Fishery Management Plan 1995 - Draft for Public Comment. Edited by M. Moran (August 1995)
- No. 86** A Review of Ministerial Policy Guidelines for Rock Lobster Processing in Western Australia from the Working Group appointed by the Minister for Fisheries and chaired by Peter Rich (December 1995)
- No. 87** Same Fish - Different Rules. Proceedings of the National Fisheries Management Network Workshop held as part of the Third Australasian Fisheries Managers Conference. F. Prokop
- No. 88** Balancing the Scales - Access and Equity in Fisheries Management - Proceedings of the Third Australasian Fisheries Managers Conference, Rottneest Island, Western Australia 2 - 4 August 1995. Edited by P. Summerfield (February 1996)
- No. 89** Fishermen's views on the future management of the rock lobster fishery. A report. Prepared on behalf of the Rock Lobster Industry Advisory Committee by The Marketing Centre. (August 1995)
- No. 90** A report on the issues effecting the use of the Dampier Archipelago. Peter Driscoll, Landvision Pty Ltd (March 1996)
- No. 91** Shark Bay World Heritage Property - Management Paper for Fish Resources. Kevin A Francesconi (September 1996)

- No. 92** Pearling and Aquaculture in the Dampier Archipelago - Existing and Proposed Operations. A report for public comment. Compiled by Ben Fraser (September 1996)
- No. 93** Shark Bay World Heritage Property - Summary of Public Submissions to the Draft Management Plan for Fish Resources. Kevin A Francesconi (September 1996)
- No. 94** Rock Lobster Industry Advisory Committee Report - Management arrangements for the Western Rock Lobster Fishery for the 1997/98 season. Frank Prokop (May 1997)
- No. 95** Australian Salmon and Herring Resource Allocation Committee. P McLeod & F Prokop (*in press*)
- No. 96** Summary Report of the Freshwater Aquaculture Taskforce (FAT) by Chris Wells (*in press*)
- No. 97** (*in press*)
- No. 98** A Pricing Policy for Fisheries Agencies - Standing Committee on Fisheries and Aquaculture Management Committee. P Millington (March 1997)
- No. 99** Management of the South Coast Purse Seine Fishery. J Fowler, R Lenanton, Kevin Donohue, M Moran & D Gaughan. (n.d.)
- No. 100** The Aquaculture of non-endemic species in Western Australia - Redclaw crayfish (*Cherax quadricarinatus*). Tina Thorne (June 1997)
- No. 101** Optimising the worth of the catch - Options and Issues. Marec Pty Ltd (September 1997)
- No. 102** Marine farm planning and consultation processes in Western Australia. Dave Everall (August 1997)
- No. 103** Future management of the aquatic charter industry in Western Australia by the Tour Operators Fishing Working Group (September 1997).
- No. 104** Management of the Houtman Abrolhos System (draft). Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia (October 1997)
- No. 105** Plan for the Management of the Houtman Abrolhos Fish Habitat Protection Area (draft). Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia (October 1997)
- No. 106** The impact of Occupational Safety and Health on the management of Western Australian Fisheries. Cameron Wilson (*in press*)
- No. 107** The Aquaculture of non-endemic species in Western Australia - Silver Perch (*Bidyanus bidyanus*). Tina Thorne (June 1997)
- No. 108** Issues affecting Western Australia's inshore crab fishery - Blue swimmer crab (*Portunus pelagicus*), Sand crab (*Ovalipes australiensis*). Cathy Campbell (September 1997)
- No. 109** Abalone Aquaculture in Western Australia. Cameron Westaway & Jeff Norriss (October 1997)
- No. 110** Proposed Voluntary Fishery Adjustment Scheme - South Coast Purse Seine Managed Fishery Report by Committee of Management (October 1997)
- No. 111** Management Options for Pilbara Demersal Line Fishing. Gaye Looby (December 1997)
- No. 112** Summary of Submissions to Fisheries Management Paper No. 108 - issues affecting Western Australia's inshore crab fishery. Compiled by Cathy Campbell (April 1998)
- No. 113** Western Rock Lobster Management - Options and Issues. Prepared by Kevin Donohue on behalf of the Rock Lobster Industry Advisory Committee. (June 1998)
- No. 114** A Strategy for the Future Management of the Joint Authority Northern Shark Fishery. Prepared by Tim Bray and Jo Kennedy. (June 1998)
- No. 115** Guidelines for granting Aquaculture Leases. Prepared by Fisheries WA, the Aquaculture Development Council & the Aquaculture Council of WA. (July 1998)
- No. 116** Future Management of the Aquatic Charter Industry in Western Australia - Final Report. By the Tour Operators Fishing Working Group (September 1998)
- No. 117** Management of the Houtman Abrolhos System. Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia. (December 1998)
- No. 118** Plan for the Management of the Houtman Abrolhos Islands Fish Habitat Protection Area (Schedule 1)
- No. 119** Access to Wildstock for Aquaculture Purposes (not published)

- No. 120** Draft Management Plan for Sustainable Tourism at the Houtman Abrolhos Islands. Prepared by LeProvost, Dames and Moore for the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries WA. (December 1998)
- No. 121** Future Directions for Tourism at the Houtman Abrolhos Islands - Draft for Public Comment. Prepared by LeProvost, Dames and Moore for the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries WA. (December 1998)
- No. 122** Opportunities for the Holding/Fattening/Processing and Aquaculture of Western Rock Lobster (*Panulirus cygnus*). A discussion paper compiled by Fisheries WA. (November 1998)
- No. 123** Future directions for the Rock Lobster Industry Advisory Committee and the Western Rock Lobster Managed Fishery. A discussion paper prepared by Kevin Donohue on behalf of the Rock Lobster Industry Advisory Committee. (December 1998)
- No. 124** A Quality Future for Recreational Fishing in the Gascoyne. Proposals for Community Discussion. A five-year management strategy prepared by the Gascoyne Recreational Fishing Working Group (May 1999).
- No. 125** Changes to Offshore Constitutional Settlement Arrangements; North West Slope Trawl Fishery and Western Deepwater Trawl Fishery. A discussion paper by Fiona Crowe and Jane Borg (May 1999)[not published]
- No. 126** The South Coast Estuarine Fishery. A discussion paper by Rod Pearn and Tony Cappelluti. (May 1999)
- No. 127** The Translocation of Barramundi. A discussion paper by Makaira Pty Ltd.[July 1999]
- No. 128** Shark Bay Pink Snapper Managed Fisheries in WA
- No. 129** Review of the Western Australian Pilchard Fishery 12 - 16 April 1999. Prepared by K.L. Cochrane, Fisheries Resource Division, Food and Agriculture Division of the United Nations (November 1999)
- No. 130** Developing New Fisheries in Western Australia. A guide to applicants for developing fisheries Compiled by Lucy Halmarick (November 1999)
- No. 131** Management Directions for Western Australia's Estuarine and Marine Embayment Fisheries. A strategic approach to management (November 1999)
- No. 132** Summary of Submissions to Fisheries Management Paper No. 126 - The South Coast Estuarine Fishery - A Discussion Paper. Compiled by Rod Pearn (November 1999)
- No. 133** Abalone Aquaculture in Western Australia, A Policy Guideline (December 1999)
- No. 134** Management Directions for WA's Coastal Commercial Finfish Fisheries. Issues and proposals for community discussion (March 2000)
- No. 135** Protecting and Sharing Western Australia's Coastal Fish Resources. The path to integrated management. Issues and proposals for community discussion (March 2000)
- No. 136** Management Directions for WA's Recreational Fisheries (March 2000)
- No. 137** Aquaculture Plan for the Houtman Abrolhos Islands (April 2000)
- No. 138** Information on Quota Management of Rock Lobster Fisheries in South Australia, Tasmania and New Zealand. By Kevin Donohue and Eric Barker (May 2000)
- No. 139** A Quality Future for Recreational Fishing on the West Coast. Proposals for Community Discussion. A five-year management strategy prepared by the West Coast Recreational Fishing Working Group (June 1999)
- No. 140** Aquaculture Plan for the Recherche Archipelago, Western Australia. (June 2000)
- No. 141** Fish Protection Measures in Western Australia (June 2001)
- No. 142** Fisheries Environmental Management Plan for the Gascoyne Region (June 2002)
- No. 143** Western Rock Lobster. Discussion paper for seasons 2001/2002 and 2002/2003 (July 2000)
- No. 144** The Translocation of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia. Prepared by Jaqueline Chappell, contributions from Simon Hambleton, Dr Howard Gill, Dr David Morgan and Dr Noel Morrissy. (*not published, superseded by MP 156*)
- No. 145** The Aquaculture of non-endemic species in Western Australia - Silver Perch (*Bidyanus bidyanus*). As amended October 2000. Tina Thorne. This replaces Fisheries Management Paper No. 107.
- No. 146** Sustainable Tourism Plan for the Houtman Abrolhos Islands (February 2001)

- No. 147** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Full Report) (April 2002)
- No. 148** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Summary Report) (April 2002)
- No. 149** Final Plan of Management for the Lancelin Island Lagoon Fish Habitat Protection Area (March 2001)
- No. 150** Draft Plan of Management for the Cottesloe Reef Proposed Fish Habitat Protection Area (April 2001)
- No. 151** Inventory of the Land Conservation Values of the Houtman Abrolhos Islands (July 2003)
- No. 152** Guidelines for the Establishment of Fish Habitat Protection Areas (June 2001)
- No. 153** A Five-Year Management Strategy for Recreational Fishing on the West Coast of Western Australia. Final Report of the West Coast Recreational Fishing Working Group (August 2001).
- No. 154** A Five-Year Management Strategy for Recreational Fishing in the Gascoyne. Final Report of the Gascoyne Recreational Fishing Working Group (September 2001)
- No. 155** Plan of Management for the Cottesloe Reef Fish Habitat Protection Area (September 2001)
- No. 156** The Translocation of Brown Trout (*Salmo Trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia (June 2002)
- No. 157** Policy for the Implementation of Ecologically Sustainable Development for Fisheries and Aquaculture within Western Australia. By W.J. Fletcher (May 2002)
- No. 158** Draft Plan of Management for the Miaboolya Beach Fish Habitat Protection Area (March 2002)
- No. 159** The Translocation of Barramundi (*Lates calcarifer*) for Aquaculture and Recreational Fishery Enhancement in Western Australia. By Tina Thorne.
- No. 160** The Introduction and Aquaculture of Non-endemic Species in Western Australia: the 'Rotund' Yabby *Cherax rotundus* and the All-male Hybrid Yabby. A Discussion Paper. (June 2002)
- No. 161** Plan of Management for the Miaboolya Beach Fish Habitat Protection Area (September 2002)
- No. 162** Reseeding of grazing gastropods and bivalves into the marine environment in Western Australia – a discussion paper. By Jane Borg.
- No. 163** Review of recreational take of coral in Western Australia – a discussion paper October 2002.
- No. 164** Report of the Mackerel Independent Advisory Panel to the Executive Director, Department of Fisheries, on criteria for access to, and management arrangements for, the proposed Mackerel Fishery (Interim) Management Plan (November 2002)
- No. 165** Report to the Minister for Agriculture, Forestry and Fisheries by the Integrated Fisheries Management Review Committee (November 2002)
- No. 166** Fisheries Statutory Management Authority Inquiry. A background paper (February 2003)
- No. 167** Draft Fisheries Environmental Management Plan for the Northern Region (*in press*)
- No. 168** Aboriginal Fishing Strategy: Report to the Minister for Agriculture, Forestry and Fisheries by the Hon E. M. Franklyn QC, Chairman of the Aboriginal Fishing Strategy Working Group (May 2003)
- No. 169** Hardy Inlet discussion paper (February 2004)
- No. 170** Management of the proposed Geographe Bay Blue Swimmer and Sand Crab Managed Fishery. By Jane Borg and Cathy Campbell (August 2003)
- No. 171** Draft Aquaculture Plan for Shark Bay (April 2004)
- No. 172** Draft Aquaculture Plan for Exmouth Gulf (April 2004)
- No. 173** Draft Plan of Management for the proposed Point Quobba Fish Habitat Protection Area (August 2003)
- No. 174** Translocation of Golden Perch, Murray Cod and Australian Bass into and within Western Australia for the Purposes of Recreational Stocking, Domestic Stocking and Commercial and Non-commercial Aquaculture (December 2003)
- No. 175** Fish Stock and Fishery Enhancement in Western Australia - a discussion paper. By Jane Borg (February 2004)
- No. 176** Fish Stock and Fishery Enhancement in Western Australia - a summary report. By Jane Borg (February 2004)
- No. 177** Fisheries Environmental Management Plan for the Gascoyne Region (*in press*)

- No. 178** Draft Plan of Management for the Kalbarri Blue Holes Fish Habitat Protection Area (March 2004)
- No. 179** A Draft Policy for the Translocation of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia for the Purposes of Recreational Stocking, Domestic Stocking and Commercial and Non-Commercial Aquaculture (August 2004)
- No. 180** The Sustainable Management of Western Australia's Temperate Shark Fisheries (July 2004).
- No. 181** A Quality Future for Recreational Fishing in the Pilbara/Kimberley. Proposals for Community Discussion. A five-year strategy for managing the recreational component of the catch, prepared by the Pilbara/Kimberley Recreational Fishing Working Group (July 2004)
- No. 182** A Quality Future for Recreational Fishing in the Southern Region of WA. Proposals for Community Discussion. A five-year strategy for managing the recreational component of the catch, prepared by the Southern Recreational Fishing Working Group (July 2004)
- No. 183** Final Report of the Fisheries Statutory Management Authority Advisory Committee. Published by the Department of Fisheries (*in press*)
- No. 184** South West Beach Seine Management Discussion Paper
- No. 185** Plan of Management for the Point Quobba Fish Habitat Protection Area (July 2004)
- No. 186** Management of the West Coast Rock Lobster Fishery - Advice to Stakeholders on Resource Sustainability Matters. (*in press*)
- No. 187** Proposals for community discussion on the future management of pink snapper fishing in Cockburn Sound and surrounding waters. (October 2004).
- No. 188** Plan of Management for the Kalbarri Blue Holes Fish Habitat Protection Area (*in press*).
- No. 189** Proposed Management Arrangements for the Gascoyne Commercial 'Wetline' Fishery. A Discussion Paper Prepared By The West Coast And Gascoyne Wetline Review Management Planning Panel (January 2005).
- No. 190** Management Arrangements for the West Coast Commercial 'Wetline' Fishery. A Discussion Paper Prepared By The West Coast And Gascoyne Management Planning Panel (January 2005).
- No. 191** Access And Allocation Arrangements For The Commercial 'Wetline' Fisheries, Proposals For Discussion. A Report To The Minister For Fisheries Prepared By The Commercial Access Panel (January 2005).
- No. 192** Integrated Fisheries Management Report - Western Rock Lobster Resource (February 2005)
- No. 192A** A Sustainable Future for Recreational Fishing in the Cocos (Keeling) Islands. Proposals for Community Discussion on a Five-Year Strategy for Managing the Recreational and Subsistence Catch (March 2005).
- No. 193** A Five-Year Management Strategy for the Pilbara/Kimberley Region of Western Australia (June 2005).
- No. 194** A Five-Year Management Strategy for the South Coast Region of Western Australia (June 2005).
- No. 195** Nature and Extent of Rights to Fish in Western Australia (June 2005).
- No. 196** The Aquaculture of Live Rock, Live Sand, Coral and Associated Products (*in press*).
- No. 197** Proposed Implementation of Sea Lion Exclusion Devices in the Western Rock Lobster Fishery (June 2005). *Internet publication*.
- No. 198** A Quality Future for the Recreational Marron Fishery – Proposals for Community Discussion. A Draft Five-Year Strategy to Ensure the Long Term Sustainability of the Marron Fishery. Produced by the RFAC Recreational Freshwater Fisheries Stakeholder Sub-Committee.
- No. 199** Management of the Proposed South Coast Trawl Fishery.
- No. 200** Integrated Fisheries Management Draft Allocation Report for the Western Rock Lobster Resource (*in press*).
- No. 201** The Minister for Fisheries' Decisions in Response to the Final Report of the Pilbara/Kimberley Recreational Fishing Working Group (Fisheries Management Paper No. 193) (August 2005).
- No. 202** The Minister for Fisheries' Decisions in Response to the Final Report of the South Coast Recreational Fishing Working Group (Fisheries Management Paper No. 194) (August 2005).
- No. 203** Western Rock Lobster Fishery. Ecological Risk Assessment 2005 Report (July 2005). *Internet publication*.
- No. 204** Integrated Fisheries Management Report. Abalone Resource (September 2005).
- No. 205** Management Arrangements for the Gascoyne Commercial 'Wetline' Fishery. Prepared By The West Coast And Gascoyne Wetline Review Management Planning Panel (January 2006).
- No. 206** Management Arrangements for the West Coast Commercial 'Wetline' Fishery. Prepared By The West Coast And Gascoyne Management Planning Panel (January 2006).
- No. 207** Access And Allocation Arrangements For The Commercial 'Wetline' Fisheries. A Report To The Minister For Fisheries Prepared By The Commercial Access Panel (January 2006).

- No. 208** Review of the Fish Resources Management Act 1994. A discussion paper (May 2006)
- No. 209** Assessment of Western Rock Lobster Strategic Management Options
An Overview of Bio-Economic, Sociological and Comparative Analyses (Volume 1 of 4)
(January 2006).
- No. 210** Assessment of Western Rock Lobster Strategic Management Options
A Bio-Economic Evaluation of Management Options for the West Coast Rock Lobster Fishery
(Volume 2 of 4) (January 2006).
- No. 211** Assessment of Western Rock Lobster Strategic Management Options
A Social Assessment of Coastal Communities Hosting the Western Rock Lobster Fishing Fleet
(Volume 3 of 4) (January 2006).
- No. 212** Assessment of Western Rock Lobster Strategic Management Options
How do Quota Management Systems Work in Rock Lobster Fisheries?
(Volume 4 of 4) (January 2006).
- No. 213** A Draft Five-Year Strategy to Ensure the Long Term Sustainability of the Marron Fishery.
Produced by the RFAC Recreational Freshwater Fisheries Stakeholder Sub-Committee (*in press*).
- No. 214** Integrated Fisheries Management Draft Allocation Report for Roe's Abalone – Perth Metropolitan
Area (*in press*).
- No. 215** The Granting, Renewal and Regulation of Aquaculture Leases in Western Australia. A discussion
paper (May 2006).
- No. 216** Proposed Fees and Charges for Section 97 Aquaculture Leases. A discussion paper (May 2006).



Department of Fisheries
Government of Western Australia



Fish for the future

Fish Resources Management Act 1994

APPLICATION FOR AN AQUACULTURE LEASE
Section 97 & Regulation 67

Department of Fisheries
168-170 St. George's Terrace
Perth WA 6000

June 2006

APPLICATION FOR AN AQUACULTURE LEASE

Section 97 & Regulation 67

Introduction

This application form (together with the Additional Information Sheet to support the application) is to be used to apply for an aquaculture lease over land and waters vested in the Minister for Fisheries, or coastal waters, under Section 97 of the *Fish Resources Management Act 1994* (FRMA). Once completed, the application and the Additional Information Sheet, are to be lodged with the Minister for Fisheries, via the *Executive Director* of the Department of Fisheries at 168 St Georges Terrace Perth, together with any additional information required in support of the application, and together with the prescribed application fee.

The Fisheries Management Paper: 'The Granting, Renewal and Regulation of Aquaculture Leases in Western Australia', provides significant guidance to applicants on the application process. The Fisheries Management Paper is available from the Department of Fisheries. Applicants should familiarise themselves with this Guideline prior to the completion of this document. Applicants are also encouraged to discuss the application with staff of the Pearling and Aquaculture Program of the Department of Fisheries prior to lodgement.

Ministerial Policy Guideline No. 8: 'Assessment of Applications for Authorisations for Aquaculture and Pearling in Coastal Waters of Western Australia' is also relevant to the assessment of aquaculture lease applications.

Aquaculture is a developing industry in Western Australia and policies in relation to aquaculture leases of sites for aquaculture operations are under constant review. Applicants should therefore ensure that the latest information is obtained from the Department of Fisheries on relevant current and proposed aquaculture lease policies.

Determining Whether the Application Can Be Assessed

The Minister may refuse to consider an application if the application does not conform, or has failed to comply with, a provision of the regulation.

The application must be completed correctly, contain all the necessary information, and be for an area of land or water over which the Minister has the power to grant a lease.

The Minister does not have legislative power to grant a section 97 aquaculture lease in all parts of Western Australia. In order to determine if the area of interest is in an area in which the Minister has the power to grant a lease, the applicant should refer to the 'Step 1' of the Fisheries Management Paper. If the proposed lease area is one in which a Section 97 aquaculture lease cannot be granted, the application fee will not be refunded.

Important Considerations in Determining Whether to Grant Lease

The Minister for Fisheries has a discretion whether to grant an aquaculture lease to an applicant and on what terms, conditions and covenants are to be imposed on any aquaculture lease. In reaching his decision, the Minister for Fisheries considers the recommendations of the Executive Director of the Department of Fisheries. The Minister for Fisheries has directed the Executive Director to consider the following important matters in determining the Executive Director's recommendations on the aquaculture lease application. Those matters are that:

- (a) The person applying is a fit and proper person to hold such an aquaculture lease;
- (b) It is in the better interests of the aquaculture industry to grant or renew the aquaculture lease;
- (c) History and/or demonstrated ability to effectively use the site for aquaculture; and
- (d) The proposed purpose of the lease is unlikely to affect other fish or the aquatic environment.

Fee

An application fee is payable at the time of making of the application for the aquaculture lease. The fee is set out in Item 10 of Part 2 of Schedule 1 to the *Fish Resources Management Regulations 1995*. As at October 2005 the fee payable for an application for an aquaculture lease is \$2,000. Intending applicants should note that fees are subject to change.

Further Information

An insert titled “Additional Information Sheet to Support an Application for an Aquaculture Lease” is to be completed and submitted with this application form. Additionally, to assist in his determination of an application for an aquaculture lease, the Minister may require further information from an applicant.

Application for aquaculture lease

- Reg 67.**
- (1) *An application for the grant or renewal of an aquaculture lease must be -*
 - (a) *made to the Minister in a form approved for that purpose by the Executive Director;*
 - (b) *accompanied by the fee set out in item 10 of Part 2 of Schedule 1; and*
 - (c) *accompanied by any information that the Minister reasonably requires for a proper consideration of the application.*
 - (2) *An applicant must provide the Minister with any further information that the Minister by notice in writing requires the applicant to provide in respect of an application.*
 - (3) *An applicant must, if required to do so by the Minister, verify by statutory declaration any information contained in, or given in connection with, an application.*
 - (4) *The Minister may refuse to consider an application if the application does not conform to a provision of this regulation or if the applicant has failed to comply with a provision of this regulation.*

Conditions, Terms and Covenants

The Minister for Fisheries may grant an aquaculture lease subject to such terms, conditions and covenants as he sees fit. It is anticipated that the Minister using this power will reserve to himself the power to add, vary or delete any term, condition or covenant in the aquaculture lease. Details of such arrangements are considered in more detail in Fisheries Management Paper: ‘The Granting, Renewal and Regulation of Aquaculture Leases in Western Australia’.

Facsimile Applications

Where facsimile applications are submitted, the original application form must be submitted to the Minister via the Executive Director of the Department of Fisheries.

Application to be provided to third parties

The applicant should note that the details of this application would be given to third parties as part of the application process. Details of this process are outlined in Ministerial Policy Guideline No.8 and Fisheries Management Paper: ‘The Granting, Renewal and Regulation of Aquaculture Leases in Western Australia’. If you require any information to be kept confidential you must specify which information and tick the box on the second last page of this application form.

Register

Applicants should be aware that the details of an aquaculture lease that may result from this application may be recorded on a Register and be available for public search.

INSTRUCTIONS FOR COMPLETING THIS APPLICATION - PLEASE USE BLOCK LETTERS

PART A

1. **Applicant** - An applicant may be one or more individuals or a body corporate. State the **full name** of each applicant. Print the Australian Company Number ("ACN") of a corporate applicant and include the applicants' Australian Business Number ("ABN") [issued for GST purposes] of the Business. If conducting business under a business name, include current Business Name Extract. An emergency contact and associated details must be provided. Body Corporate applicants are to include a current company search showing names and addresses of directors, secretaries and shareholders.
2. State the full **business address** including the postcode. The business address must be a place, **not a post office box number**, and is normally the office address of the business. State a **telephone and facsimile number** (where available). State the mailing address of the applicant(s) (where this is the same as the business address write "as above"). Include an e-mail address where applicable.
3. State the details in relation to the nature of the licence or licence application which exists for the site.

PART B

4. **Description of (site) where aquaculture is to be conducted** - State the full description of the location of the site the subject of the proposed lease.
5. If the site is in coastal waters, state whether the site is in an area that has been determined to be suitable for the proposed aquaculture activities. The application should state if there are any current vesting or tenure over the area in particular if it is within an area of a marine conservation reserve or in an area vested in another authority.
6. **Guarantor or Bond Arrangements** – State the full name(s) of the proposed guarantor for the lease. Alternatively, elect that the security arrangements will be managed by way of bond.
7. **Registered proprietor(s) of site** - State the full name(s) of the registered proprietor(s) of the site. What interests in the site are held by other parties. Is the site vested in the Minister for Fisheries, or is the site coastal waters? If coastal waters, is the site vested in or under the control of another entity?
8. **Scale plan** - Attach a detailed plan showing the boundaries of the site and geographic coordinates.

PART C

9. **Lease term and aquaculture species / culture method requested** - State the term (of no more than 21 years) of aquaculture lease requested. (Note that the Minister may decide to grant a term of aquaculture lease different to that requested, and that the Minister will generally not be of a mind to grant an initial lease for a term greater than five years.)
10. State the species of fish to be cultured on the aquaculture lease (excluding *Pinctada maxima*) noting that by law the aquaculture of any species must be authorised by an existing aquaculture licence. (Note that the Minister has discretion to authorise the culture of such species as he sees fit on the aquaculture lease.) State the method of culture to be undertaken on the site.
11. **Declaration** - There are penalties under the *Fish Resources Management Act 1994* for making false or misleading statements in applications.
12. **Execution of Application**
 - a. If the applicant is one or more individuals all must sign and date this application.
 - b. If the applicant is a partnership all partners must sign and date this application.
 - c. If the application is by a body corporate other than a company, the application must be signed and sealed in accordance with the constitution of the body corporate and dated.
 - d. If the application is by a company the application should be executed in accordance with Section 127 of the *Corporations Act 2001*.
 - e. If the application is to be executed by an attorney of the applicant, the attorney should sign in his own name as attorney for the application and state that the Power of Attorney has not been revoked. The Attorney is to produce the relevant Power of Attorney instrument for viewing and provide a copy for recording.

This form may be faxed, copied or electronically reproduced; however signatures must be original.

Department of Fisheries
 Level 3, 168 St Georges Terrace
 PERTH 6000

☎ (08) 9482 7333
 Facsimile (08) 9482 7389

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Fish Resources Management Act 1994
APPLICATION FOR AN AQUACULTURE LEASE
 Sections 97 & Regulation 67

To the Minister for Fisheries

The applicant named in Part A, hereby applies for an Aquaculture Lease to occupy and use the site described in Part B in or upon which aquaculture activities are or will be engaged in pursuant to an Aquaculture licence.

PART A

1. Applicant(s):

.....

ABN:.....ACN:.....

Business Address:

☎: (.....) Facsimile No: (.....).....

Mobile No:

Mailing Address:..... Internet email:.....

Emergency Contact Name:..... Contact No:

If an Aquaculture Licence exists for the site relevant to the lease application:

Aquaculture Licence Number: Date of Expiry:

Aquaculture Licensee.....

Note that:

- If the application is for a site that is licensed by a separate entity, written endorsement for the lease from the licensee must be attached, along with details of the arrangements with the existing licensee.

If no Aquaculture Licence exist for the site relevant to the lease application:

Please indicate the intentions in relation to the establishment of an Aquaculture Licence over the site:

- Have submitted an Aquaculture Licence application in the same name as the applicant for this lease application. Date:.....
- Intend to submit an Aquaculture Licence application in the same name as this lease application. Intended Date:.....
- An Aquaculture Licence application has been submitted in the name of a party other than that of the applicant for this lease. Applicant:.....Date:.....
- An Aquaculture Licence application will be submitted in the name of a party other than that of the applicant for this lease. Applicant:.....Date:.....
- Other:.....
.....
.....

Note that:

- If the application is for a site for which a separate entity is applying for an aquaculture licence, written endorsement of the respective applicants must be attached, along with details of the arrangements with the existing licensee.

PART B

2. Location of Site:

Onshore Offshore

Description of the site:
.....
.....

3. Registered Proprietor(s) or persons holding interests of whatever nature over site (and describe those interests)

.....
.....

4. List other persons you are aware of with an interest in or over the site and the nature of that interest (eg a petroleum or native title interest)

.....
.....

5. Details of Guarantor for the Lease

.....
.....

OR, elect for security matters to be dealt with by way of bond? YES

6. Scale Plan attached YES NO

PART C

7. Lease Term, Species and Method of Aquaculture

7.1 Lease Term Requested

7.2 Aquaculture Species.....

.....

7.3 Proposed culture technique.....

.....

.....

7.4 Purpose of use.....

.....

.....

Is there any information contained in this application which you consider to be confidential?

YES

NO

If yes, please specify:

.....

.....

.....

.....

.....

.....

8. Consent

In submitting this application I/We consent to the provision of this information to the fishing, aquaculture and pearling industry and/or community representative organisations to assist in consideration of any impact this development and / or aquaculture lease may pose.

9. Applicant’s Declaration

I/We declare that the statements made in this Application and the Additional Information Sheet to support the Application for an Aquaculture Lease, and any other attachments submitted with this Application are true and correct.

10. Execution

Please tick the relevant box relating to the applicant and complete the particulars below:

- Individual/Partnership
- Corporation (incorporated under company legislation or under the *Corporations Act*)
- Appointed an Attorney for signing

10.1 Individual persons/partnership

Signature:..... Date:.....

Signature:..... Date:.....

Signature:..... Date:.....

Signature:..... Date:.....

10.2 Company or Body Corporate

The application must be executed under the seal of the company/body corporate or otherwise in accordance with the company’s/body corporate’s constitution.

.....
.....

In the presence of:

Date:.....



10.3 Power of Attorney

Signed by :....., as Attorney for:....., under Power of Attorney dated:with register number:, who confirms that the Power of Attorney has not been revoked.

Copy of Power of Attorney Attached YES



Department of Fisheries
Government of Western Australia



Fish Resources Management Act 1994

**ADDITIONAL INFORMATION SHEET TO SUPPORT
APPLICATION FOR AN AQUACULTURE LEASE**
Section 97 & Regulation 67

(Aquaculture lease over coastal waters or land/water vested in Minister)

Department of Fisheries
168-170 St. George's Terrace
Perth WA 6000

June 2006

**ADDITIONAL INFORMATION SHEET TO SUPPORT
APPLICATION FOR AN AQUACULTURE LEASE**

**(AQUACULTURE LEASE OVER COASTAL WATERS OR
LAND / WATER VESTED IN MINISTER)**

Instructions

- The Minister does not have legislative power to grant a section 97 aquaculture lease in all parts of Western Australia. In order to determine if the area of interest is in an area in which the Minister has the power to grant a lease, the applicant should refer to the 'Step 1' of the Fisheries Management Paper: 'The Granting, Renewal and Regulation of Aquaculture Leases in Western Australia'. If the proposed lease area is one in which a Section 97 aquaculture lease cannot be granted, the application fee will not be refunded.
- All applicants for an aquaculture lease must complete SECTION ONE and TWO of this form.
- Applicants who already have an aquaculture licence for the site complete PART A of SECTION TWO while applicants who do NOT have an aquaculture licence for the site complete PART B of SECTION TWO.
- Applicant then signs all pages of this Additional Information Sheet and submits this with the completed Application for Aquaculture Lease.
- Attach additional sheets where insufficient space is provided, or attachments (eg maps) are requested.
- If an application is being made jointly by one or more persons (including bodies corporate) then answer questions / provide requested information in relation to each and all of the applicants.
- The executing parties of the application must sign each page of the Additional Information Sheet and any other pages attached.
- Please document the total number of pages of Additional Information Sheet : _____

SECTION ONE

DETAILS OF APPLICANT FOR AQUACULTURE LEASE

AND

**GENERAL MATTERS (INCLUDING “FIT AND PROPER”
AND “BETTER INTERESTS” CONSIDERATIONS)**

Details of Applicant

The applicant is to provide the following additional information about the application.

If a partnership, company, trust or joint venture a list of all partners or directors listed on formal Australian Securities Commission documents must be attached together with a copy of the Partnership Deed, Trust Deed and Company Constitution each company.

If a company, provide details of major shareholding and State of Registration together with an official copy of the list of Directors. Also provide current ASIC search and Business Name Search as appropriate.

List names and responsibilities of key staff.

Honesty

List (and detail circumstances of) any convictions (relating to you /the company directors/key staff) for offences under the *Fish Resources Management Act 1994* (“the Act”), *Fish Resources Management Regulations 1995* (“the Regulations”), *Pearling Act 1990*, *Pearling Regulations 1991*, Environmental legislation, Commonwealth and Interstate Law equivalents and all breaches of conditions of licences or permits issued under these Act or Regulations.

List (and detail circumstances of) any convictions (relating to you/the company directors/key staff) for any other offences

Financial Capability/Viability of Business Plan

Demonstrate financial capability to pay rents and fees and provide bonds and/or bank guarantees in relation to the lease.

Have you ever been declared bankrupt YES NO
If yes, specify when you were declared bankrupt, whether the bankruptcy has been discharged and date of discharge.

Has a restriction ever been placed on you managing a company? YES NO
(Eg by court order under *Corporations Act 2001* disqualifying you from managing corporations.)

If yes, specify when you were made subject to the restriction, what the restriction was, what the circumstances leading to the restriction were, whether you have been released from the restriction and date of release.

If a company, has the company ever been placed into administration or receivership? YES NO

If a company, is the company solvent? YES NO

List and fully describe all other matters that you know that might reasonably be relevant to the consideration whether you are a fit and proper person to be granted an aquaculture lease (eg have you ever been adversely named in public

inquiry, have you ever made voluntary undertakings to ACCC in relation to misleading conduct, have you ever had a licence withdrawn by an authority etc) _____

List the names and contact details of three referees _____

Attach a business plan in relation to the management, use and operation of the site.

BETTER INTEREST OF THE AQUACULTURE INDUSTRY CONSIDERATIONS

The Minister for Fisheries needs to be satisfied that the grant or renewal of the relevant aquaculture lease is in the better interests of the aquaculture industry in Western Australia. In formulating a recommendation, the Executive Director may, amongst other matters, take into account the following matters which the applicant should address:

- (a) The appropriateness of the species, size of lease, and other factors relevant to the viability of the proposed purpose;

- (b) The impact the grant or renewal may have on other stakeholders with an interest in or adjacent to the area of land or water;

- (c) The social and economic or other industry benefits that can be gained for the aquaculture industry;

- (d) Any potential negative impact to the aquaculture industry that may result;

- (e) The cumulative impact that might result from the granting of the lease;

- (f) Comment from the peak bodies and advisory committees.

HISTORY AND/OR DEMONSTRATED ABILITY TO EFFECTIVELY USE THE SITE FOR AQUACULTURE (Complete only if there is an existing aquaculture licence over the site)

A performance review will be conducted in relation to the operation of the aquaculture licence. This will be a considered in the assessment of the lease application. Please provide the following as input into the performance review:

▪ **Level of infrastructure development on the site**

▪ **Level of production (value and/or quantity) as evidenced on production returns**

Have you filed production returns or annual reports with the Department for the whole of the period of the last 5 years or for the whole of the period since the aquaculture licence was granted? YES NO

If not all (or no) production returns or annual reports were filed, are the missing returns attached.

YES NO

Explain why all returns / reports were not submitted to the Department (if that is the case) and what production levels have been achieved and what development has occurred.

▪ **Compliance with any development plan submitted to the Department**

Have you met all development plans for the site submitted to the Department of Fisheries? If applicable, explain why you have not complied with development plans.

▪ **Compliance with any agreed individual or industry performance standards**

Have you met all performance standards for the site submitted to the Department of Fisheries? If applicable, explain why you have not complied with performance standards.

- **Set out more detail on the future development / work you have planned for the site including what action has already been taken to implement the planned work / development**

- **Describe the results of any trial or research work undertaken on the site**

- **Compliance with licence conditions**

Have you met all licence conditions of the aquaculture licence related to this site? If applicable, explain why you have not complied with all conditions.

Note that if there is not an existing aquaculture licence over the site, relevant information is to be provided under the Fit and Proper Person criteria.

SECTION TWO

DETAILS OF EFFECTIVE USE OF SITE FOR WHICH AQUACULTURE LEASE IS SOUGHT

Instructions:

If you have an aquaculture licence for the site COMPLETE PART A.

If you DO NOT have an aquaculture licence for the site COMPLETE PART B.

Complete EITHER PART A OR PART B.

It is strongly recommended that you provide as much detailed and precise information in this section as possible. The Minister has decided that effective use of the site is an important matter to be considered in assessing applications. Obviously then, the greater the detail and precision of the information supplied, the greater the likelihood of you being offered a lease or a longer lease term.

PART A

**(COMPLETE THIS PART IF THERE IS ALREADY
AN AQUACULTURE LICENCE FOR THE SITE)**

Copy of licence (including map of site with coordinates of boundaries) attached YES NO

Enclose a recognised map or chart indicating the precise area or areas of the site in which your current aquaculture operation is located.

Area sought (ie the area of the licensed site). _____

General description of location. _____

Geographic location (ie closest town). _____

Distance of proposed site from the nearest town. (in a straight line) _____

Distance from nearest residential area. _____

Name of local Shire or Council. _____

Current and Proposed Access (boat, shore, etc) _____

Attach a recognised map or chart indicating current and any future planned access routes to the site.

Attach a map or marked up chart showing navigation marking and lighting on the proposed area (including co-ordinates). General comments on navigation, lighting and mooring (if relevant), consistent with the Standard Guideline.

PART B

(COMPLETE THIS PART IF THERE IS NO AQUACULTURE LICENCE FOR THE SITE)

Set out information on your intended use / development of the site over time (eg intended percentage of site area used as development progresses, intended development of particular portions of the site etc, intended production over specific time periods).

Area sought (in hectares). _____

General description of location. _____

Geographic location (ie closest town). _____

Distance of proposed site from the nearest town. (in a straight line) _____

Distance from nearest residential area. _____

Name of local Shire or Council. _____

Proposed Access (boat, shore, etc) _____

Attach a recognised map or chart indicating future planned access routes to the site.

Attach a map or marked up chart showing actual and planned navigation marking and lighting on the proposed area (including co-ordinates). General comments on navigation, lighting and mooring (if relevant).

Set out more detail on the future development / work you have planned for the site including what action has already been taken to implement the planned work / development.

