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Guidelines for granting aquaculture leases.

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Fisheries management paper

Guidelines for granting Aquaculture Leases

A discussion paper
prepared by Fisheries WA in consultation with the
Aquaculture Development Council
& Aquaculture Council of WA

Fisheries management paper No.115



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CONTENTS

Background	3
Minister may issue aquaculture leases.....	3
Leases over marine and inland waters.....	4
Lease assessment and consultation processes	4
Granting leases to existing aquaculture licensees in marine and inland waters	5
Existing marine aquaculture licences.....	5
Lease periods of up to 21 years for existing licensees	7
Lease must be used for the purpose granted.....	7
Aquaculture licence may be subject to performance criteria.....	8
Marking of lease boundaries	8
Providing public access to leases	9
Submission of development plan and environmental information.....	9
Sub-leasing not recognised by Minister or agency.....	10
Transfer of licences	10
Leaseholders to deposit security bond.....	10
Public liability insurance.....	11
Minister may vary terms of lease	11
Annual aquaculture lease rental fees	12
Recommendations	13
Attachment 1 - Part 8 - Aquaculture.....	17

This discussion paper has been prepared by Mike McMullan and Katie Weir in consultation with officers of the Pearling and Aquaculture Program of Fisheries Western Australia, the Aquaculture Development Council (ADC) and the Aquaculture Council of Western Australia (ACWA).

Comment on the discussion paper is welcomed. Following receipt and evaluation of comments, Ministerial Policy Guidelines for granting aquaculture leases will be published by the Minister in accordance with section 246 of the *Fish Resources Management Act 1994*.

Your written comments may be mailed or faxed to:

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Comments must be received by September 15 1998.

Background

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

A responsibly managed and sustainable aquaculture industry in Western Australia can only be achieved if the community, industry and Government have a common understanding of the requirements of the aquaculture industry and the processes involved in the assessment of aquaculture applications.

This discussion paper will deal with issues related to the granting of leases for aquaculture and will set out a process for the management of aquaculture leases and associated licences. It will be the basis for preparing the draft Ministerial Policy Guidelines for the granting of aquaculture leases. The draft Ministerial Policy Guidelines will then be finalised after consultation with the Aquaculture Development Council and the Aquaculture Council of Western Australia.

This discussion paper has been prepared following a request from the Aquaculture Development Council to the Minister for Fisheries to begin preparing draft policy guidelines for granting aquaculture leases.

The relevant aquaculture and licensing provisions of the *Fish Resources Management Act 1994* (called in this paper the *FRMA*) are attached (Attachment 1).

Minister may issue aquaculture leases

Part 8 of the *FRMA* provides the legal and administrative framework for the Minister for Fisheries and Fisheries WA (FWA) to manage aquaculture in Western Australia.

Section 97 of the *FRMA* enables the Minister for Fisheries to grant aquaculture leases over land and waters vested in the Minister for aquaculture purposes, or over an area of coastal waters. Prior to the commencement of the *FRMA* on 1 October 1995 there was no capacity to issue leases for aquaculture in WA and as a result persons engaging in aquaculture do so under the authority of a licence issued by the Executive Director.

The *FRMA* provides some guidance on the nature of an aquaculture lease, and for the determination of terms, covenants or conditions as the Minister thinks fit.

Leases over marine and inland waters

To date, no leases for aquaculture in marine or inland waters have been issued under the *FRMA*.

Currently aquaculturists occupy aquaculture marine or inland waters by annual licence (Section 93), with an annual right of renewal (Section 94), subject to good behaviour (Section 143).

These licensing procedures are identical to those that apply to aquaculture on private land, where there is security of tenure as either freehold or leasehold. However, with a growing number of users competing for waters suitable for aquaculture production, these provisions are no longer adequate for managing aquaculture in marine and inland waters. This is because they fall short of providing security of tenure for aquaculturists to the same extent as leasehold title.

The granting of leases for periods of up to 21 years, with a right of renewal from time to time, will provide an enhanced level of security for these aquaculturists and provide a more favourable investment climate for those seeking to enter the industry.

It is therefore proposed that, subject to application, all new aquaculture licences for marine and inland waters be attached to a lease issued by the Minister for Fisheries. If possible, the waters will be vested in the Minister.

Recommendation 1

All new aquaculture licences for marine and inland Crown waters to be attached to a lease issued by the Minister for Fisheries. If possible, the waters will be vested in the Minister.

Lease assessment and consultation processes

All applications for licences to engage in aquaculture in coastal waters are assessed in accordance with Ministerial Policy Guideline No. 8 entitled *Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia*. Applications for leases 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 are also advertised for public comment. Proposals for land with no water component will continue to be assessed by FWA in liaison with relevant government agencies.

Recommendation 2

Future applications for coastal water aquaculture licences and leases will be dealt with concurrently in accordance with Ministerial Policy Guideline No. 8 entitled Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia. Land-based proposals with no water component will continue to be assessed by FWA in liaison with relevant government agencies.

Granting leases to existing aquaculture licensees in marine and inland waters

All existing marine aquaculture licensees are authorised by their licence to occupy specific sites for aquaculture purposes. Licences have been issued by the Executive Director following assessment of the proposal by relevant government agencies, especially in relation to the suitability of the proposed site and its environmental assessment.

Licences issued under the *FRMA* confer upon licensees an annual statutory right to renew their licence to occupy the aquaculture site, subject only to the “good behaviour” provisions of section 143 of the *FRMA*.

Aquaculturists can therefore expect their licences to be renewed from year to year by the Executive Director provided that they are not in breach of section 143, which includes licence conditions.

Existing marine aquaculture licences

Existing marine aquaculture sites (excluding pearling) fall into three categories:

- those in coastal waters (14 sites);
- those in waters controlled by a port authority (15 sites in total: Albany Port Authority, 3 sites; Fremantle Port Authority, 8 sites; Port Hedland Port Authority, 1 site; Bunbury Port Authority, 1 site; Dampier Port Authority, 2 sites.);
- those in a marine park (11 sites in total: Shoalwater Islands Marine Park, 3 sites; Shark Bay Marine Park, 8 sites).

Section 97 of the *FRMA* empowers the Minister for Fisheries to grant leases for aquaculture purposes.

Section 97(8) limits the Minister’s power to grant leases only with respect to land and waters vested in him for aquaculture purposes, or with respect to an area of coastal waters.

After finalising Ministerial Policy Guidelines, to be made under Section 246 of the *FRMA* (based on this discussion paper), and observing the requirements of the Commonwealth *Native Title Act 1993* there are no impediments to granting leases for existing aquaculture sites in unencumbered coastal waters. However, granting leases for existing sites will only occur after a review by FWA of the use of the lease area and the species farmed within the lease. Depending on the outcome of the review, leases may be granted for any period up to 21 years as determined by the Minister.

FWA has commenced discussions with the various port authorities and the Department of Conservation and Land Management to facilitate the granting of leases with respect to existing aquaculture sites in waters controlled by the respective agencies. A head lease agreement was recently established between the Minister and the Fremantle Port Authority for all mussel farming sites in Cockburn Sound.

With respect to **other** port authorities, FWA will continue to develop the proposal for head lease agreements with the Minister for Fisheries as a means of securing tenure for aquaculture ventures. The Minister for Fisheries will then sub-lease the lease area or portions of the area to licensees.

Legislative provisions within the *Acts Amendment (Marine Reserves) Act 1997* will enable an existing aquaculture licensee in a marine park to convert to leasehold tenure, so long as:

- (a) a *Conservation and Land Management Act 1984* (called the ‘*CALM Act*’ in this paper) management plan applies to the area and granting a lease is consistent with the management plan;
- (b) the Minister for Fisheries has consulted with the Minister responsible for the administration of the *CALM Act* and taken into account any recommendation of that Minister.

Amendments to the *FRMA* as contained in the *Acts Amendment (Marine Reserves) Act 1997* provide that if an aquaculture licence that is not attached to a lease 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. In such circumstances compensation may be payable under the provisions of the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*.

With the exception of leases for existing aquaculture sites, no new licences or leases for aquaculture in permissible areas of marine reserves will be granted without the approval of the Minister responsible for the *CALM Act*.

Recommendation 3

All existing aquaculture licensees in marine and inland Crown waters are to be considered eligible for leases for the sites they currently occupy, after a review by Fisheries WA of the use of the licence area, including whether licence conditions or performance criteria that may attach to the licence have been met. Depending on the outcome of the review, leases may be granted for any period up to 21 years as determined by the Minister.

Recommendation 4

All existing marine aquaculture licensees, depending on the outcome of the review outlined in recommendation 3, will be eligible to apply for leases for the sites they currently occupy in marine reserves established under the CALM Act as long as:

- (a) *a CALM management plan applies to the area and granting a lease is consistent with the management plan;*
- (b) *the Minister for Fisheries has consulted with the Minister responsible for the CALM Act and taken into account any recommendation of that Minister.*

Recommendation 5

Fisheries WA, on behalf of the Minister for Fisheries, will develop proposals for negotiating head lease agreements with the various port authorities, or other relevant agencies, for existing and future aquaculture sites in port authority areas, or other areas as deemed necessary.

Duration of leases

Section 97(4) of the *FRMA* empowers the Minister to grant leases for periods of up to 21 years and provides for leases to be renewed from time to time for periods not exceeding 21 years. This does not mean that applicants for leases will be granted leases for 21 years automatically. The duration of the lease period will be determined by the Minister based on the assessment of the application.

Lease periods of up to 21 years for existing licensees

Existing aquaculture licensees have been granted licences to engage in aquaculture on a specific site following assessment of the proposal by the Inter-Departmental Committee for the Aquaculture (IDCA). An existing aquaculture licence confers upon the holder a right to have the licence renewed annually subject only to the good behaviour provisions of the *FRMA*. Aquaculture licensees therefore already have a form of guaranteed tenure, albeit that this guarantee is qualified by the provisions of section 143 of the *FRMA*.

It is therefore proposed that existing aquaculture licensees who can demonstrate present or future commercial production may be granted leases for up to 21 years. It is also proposed that in most cases leases be granted to existing licensees without the requirement for further assessment.

Recommendation 6

Existing aquaculture licensees, depending on the outcome of the review outlined in recommendation 3, who can demonstrate commercial production for the species authorised and for the areas authorised, may be granted leases for up to 21 years by the Minister with a right of renewal for up to 21 years.

Lease must be used for the purpose granted

An aquaculture lease is granted by the Minister for Fisheries to enable the licensee sole use of the lease area for the purposes of producing fish by means of aquaculture. Section 100 of the *FRMA* enables the Minister to terminate a lease if it is being used for other purposes. A licensee will be asked to show why the lease should not be terminated by the Minister if the lease area is being used for purposes other than aquaculture or if the area is being held but not used for aquaculture.

Recommendation 7

A licensee will be asked to show why their lease should not be terminated by the Minister if the lease area is being used for purposes other than aquaculture and activities associated with aquaculture, or if the area is being held but not used for aquaculture.

Aquaculture licence may be subject to performance criteria

Consistent with the Government's desire to ensure maximum economic returns to the State from aquaculture, licence areas and lease areas that are granted or issued to aquaculture licensees should be used to their full potential. It is therefore proposed to attach performance criteria through conditions on aquaculture licences (as described below).

Aquaculturists undertake activities under the authority of a licence issued by the Executive Director under Section 92 of the *FRMA*. Section 95 of the *FRMA* provides that a licence may be issued subject to any prescribed conditions or any conditions imposed by the Executive Director. These conditions may relate to performance criteria that a person must meet in operating the licence. Section 94 of the *FRMA* provides that if a person applies for the renewal of an aquaculture licence the Executive Director is to renew the licence subject to Section 143 of the *FRMA*.

Section 143 of the *FRMA* states that the Executive Director may, by notice in writing given to the licence holder, cancel, suspend for any period or refuse to renew the licence if a licence condition has been contravened. Therefore, the Executive Director may place performance criteria on the licence as a licence condition and may cancel, suspend or refuse to renew an aquaculture licence if the performance criteria or any other licence conditions are not met. Section 99 of the *FRMA* provides that if a licence is cancelled, then the lease in connection with that licence is automatically cancelled.

Recommendation 8

To ensure the best use of leased areas the Executive Director shall impose conditions about performance criteria on the associated aquaculture licence. If a licence is cancelled as a result of a breach of a condition, the lease is cancelled automatically.

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 to the lease holder by reducing the possibility of damage to floats, lines, markers etc. by unwary boaters.

It will be a requirement for all aquaculture leases to be marked according to Department of Transport and/or FWA specifications for day and night navigation.

Recommendation 9

All aquaculture leases will be required to be marked to Department of Transport and/or FWA specifications for day and night navigation.

Providing public access to leases

Experience in the Dampier Archipelago, Albany Harbours and elsewhere has shown that it may be necessary in some instances to provide navigational passages through an aquaculture lease, or provide moorings for recreational fishing within the lease area. Applicants are encouraged to consider the requirements of the wider boating and recreational public when preparing new aquaculture proposals for assessment, or when making an application to the Minister for a lease over an existing aquaculture site.

Recommendation 10

Applicants will be encouraged to consider the requirements of the wider boating and recreational public when preparing new aquaculture proposals or when making an application to the Minister for a lease over an aquaculture site.

Submission of development plan and environmental information

Applicants for new aquaculture licences and leases will be required to submit a development plan containing documentation about:

1. Details of financial resources available to the proponent to develop the lease;
2. Targets/milestones for the venture;
3. The proponent's ability to achieve those targets.

Existing licence holders will also be required to prepare a five-year development plan.

All applicants for licences and leases will be required to provide sufficient detail to enable the Department of Environmental Protection to assess the application in accordance with relevant statutory responsibilities and, where appropriate, determine an environmental monitoring program.

Recommendation 11

Applicants for new aquaculture licences and leases will be required to submit a development plan containing documentation about:

1. *Details of financial resources available to the proponent to develop the lease;*
2. *Targets/milestones for the venture;*
3. *The proponent's ability to achieve those targets.*

Recommendation 12

All applicants for new licences and leases will be required to provide sufficient detail to enable the Department of Environmental Protection to assess the potential environmental impact of the proposal and, where appropriate, determine an environmental monitoring program for the operation.

Sub-leasing not recognised by Minister or agency

Neither the Minister for Fisheries nor FWA will recognise any sub-leasing arrangement from leases granted by the Minister for Fisheries that may be entered into by the leaseholder. Regardless of whether a sub-lease has been entered into, the original lessee will be held responsible for meeting all legal and administrative requirements and liabilities arising out of the operation of the lease.

Recommendation 13

For leases granted by the Minister for Fisheries, regardless of whether a sub-lease has been entered into, the original lessee will be held responsible for meeting all legal and administrative requirements and liabilities arising out of the lease.

Transfer of licences

The Executive Director may approve the transfer of an aquaculture licence to a third party, subject to the person complying with “fit and proper person” guidelines made under the FRMA. When the licence transfer has been approved, the lease agreement between the transferor and the Minister will be terminated and the Minister will enter into a new lease agreement with the new licensee.

Recommendation 14

The Executive Director may approve the transfer of an aquaculture licence to a third party, subject to the person complying with “fit and proper person” guidelines made under the Fish Resources Management Act 1994. When the licence transfer has been approved, the lease agreement between the transferor and the Minister will be terminated and the Minister will enter into a new lease agreement with the new licensee.

Leaseholders to deposit security bond

Successful applicants for leases will be required to deposit a security bond with the Minister within fourteen days of a written notice requesting the bond. These funds may be necessary for the rehabilitation of a lease area upon the transfer, expiry or cancellation of a lease.

The security bond shall be held in a private trust account administered by the Executive Director to ensure the removal of all property, equipment, structures, refuse and debris from the licensed area, and the rehabilitation of the area to the satisfaction of the Executive Director. After the site is cleaned to the Executive Director's satisfaction the security bond, including interest accumulated, will be refunded. If the site is not cleaned to the satisfaction of the Executive Director the security bond will be used by the Executive Director to pay for the clean up. Surplus funds may be returned upon application by the former licensee.

Recommendation 15

Successful applicants for leases will be required to deposit a security bond with the Minister within fourteen days of a written notice requesting the bond.

Public liability insurance

The licensee shall have at all times current accident and indemnity insurance and lodge with the Executive Director an insurance certificate that meets all requirements stipulated by the Executive Director.

Recommendation 16

The licensee will have at all times current accident and indemnity insurance and lodge with the Executive Director of Fisheries WA an insurance certificate that meets all requirements stipulated by the Executive Director.

Minister may vary terms of lease

Leases for aquaculture may be issued for periods of up to 21 years. This is a substantial period of time during which issues may arise which were not envisaged at the time the lease was granted. This may mean that the terms of the lease will need to be varied before the lease expires. Section 97(7) of the *FRMA* provides that a lease may be varied in the manner provided in the lease. It is therefore proposed that all leases contain a process that will enable the terms of a lease to be varied at any time. The process to be followed is as follows:

If the Minister initiates the lease variation then the Executive Director must advise the lessee of the proposed variation by giving written notice to the lessee. 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.

The Minister shall publish all variations to leases in the Government Gazette.

If the lessee initiates the lease variation proposal then the lessee must apply in writing to the Minister. The lessee may be required to provide further information to enable the Minister to decide whether to agree to the variation. The lessee may also be required to pay a fee.

Recommendation 17

All leases issued will contain a provision that will enable the Minister for Fisheries to vary the terms of a lease at any time, and specify that the Minister must consult with the lessee before varying the terms of a lease.

Recommendation 18

The Minister shall publish all variations to leases in the Government Gazette.

Annual aquaculture lease rental fees

Annual lease rental fees of \$155 per square nautical mile (or part thereof) are currently applicable to the pearling industry. Initial annual rent fees of \$155 per square nautical mile or part thereof should also be applied to aquaculture leases. However, FWA is currently reviewing its approach to setting lease fees. This may result in adopting different lease rates.

The lease will contain a rent review clause to allow for rent variations.

Recommendation 19

An initial annual rental fee of \$155 per square nautical mile or part thereof will be applied to aquaculture leases, pending a review of lease fees.

RECOMMENDATIONS

Recommendation	Page number
<p><i>Recommendation 1</i></p> <p><i>All new aquaculture licences for marine and inland Crown waters to be attached to a lease issued by the Minister for Fisheries. If possible, the waters will be vested in the Minister.</i></p>	4
<p><i>Recommendation 2</i></p> <p><i>Future applications for coastal water aquaculture licences and leases will be dealt with concurrently in accordance with Ministerial Policy Guideline No. 8 entitled Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia. Land-based proposals with no water component will continue to be assessed by FWA in liaison with relevant government agencies.</i></p>	4
<p><i>Recommendation 3</i></p> <p><i>All existing aquaculture licensees in marine and inland Crown waters are to be considered eligible for leases for the sites they currently occupy, after a review by Fisheries WA of the use of the licence area, including whether licence conditions or performance criteria that may attach to the licence have been met. Depending on the outcome of the review, leases may be granted for any period up to 21 years as determined by the Minister.</i></p>	6
<p><i>Recommendation 4</i></p> <p><i>All existing marine aquaculture licensees, depending on the outcome of the review outlined in recommendation 3, will be eligible to apply for leases for the sites they currently occupy in marine reserves established under the CALM Act as long as:</i></p> <ul style="list-style-type: none"> <i>(a) a CALM management plan applies to the area and granting a lease is consistent with the management plan;</i> <i>(b) the Minister for Fisheries has consulted with the Minister responsible for the CALM Act and taken into account any recommendation of that Minister.</i> 	6

Recommendation 5

7

Fisheries WA, on behalf of the Minister for Fisheries, will develop proposals for negotiating head lease agreements with the various port authorities, or other relevant agencies, for existing and future aquaculture sites in port authority areas, or other areas as deemed necessary.

Recommendation 6

7

Existing aquaculture licensees, depending on the outcome of the review outlined in recommendation 3, who can demonstrate commercial production for the species authorised and for the areas authorised, may be granted leases for up to 21 years by the Minister with a right of renewal for up to 21 years.

Recommendation 7

8

A licensee will be asked to show why their lease should not be terminated by the Minister if the lease area is being used for purposes other than aquaculture and activities associated with aquaculture, or if the area is being held but not used for aquaculture.

Recommendation 8

8

To ensure the best use of leased areas the Executive Director shall impose conditions about performance criteria on the associated aquaculture licence. If a licence is cancelled as a result of a breach of a condition, the lease is cancelled automatically.

Recommendation 9

9

All aquaculture leases will be required to be marked to Department of Transport and/or FWA specifications for day and night navigation.

Recommendation 10

9

Applicants will be encouraged to consider the requirements of the wider boating and recreational public when preparing new aquaculture proposals or when making an application to the Minister for a lease over an aquaculture site.

Recommendation 11

9

Applicants for new aquaculture licences and leases will be required to submit a development plan containing documentation about:

- 1. Details of financial resources available to the proponent to develop the lease;*
 - 2. Targets/milestones for the venture;*
- The proponent's ability to achieve those targets*

Recommendation 12

10

All applicants for new licences and leases will be required to provide sufficient detail to enable the Department of Environmental Protection to assess the potential environmental impact of the proposal and, where appropriate, determine an environmental monitoring program for the operation.

Recommendation 13

10

For leases granted by the Minister for Fisheries, regardless of whether a sub-lease has been entered into, the original lessee will be held responsible for meeting all legal and administrative requirements and liabilities arising out of the lease.

Recommendation 14

10

The Executive Director may approve the transfer of an aquaculture licence to a third party, subject to the person complying with "fit and proper person" guidelines made under the Fish Resources Management Act 1994. When the licence transfer has been approved, the lease agreement between the transferor and the Minister will be terminated and the Minister will enter into a new lease agreement with the new licensee.

Recommendation 15

11

Successful applicants for leases will be required to deposit a security bond with the Minister within fourteen days of a written notice requesting the bond.

Recommendation 16

11

The licensee will have at all times current accident and indemnity insurance and lodge with the Executive Director of Fisheries WA an insurance certificate that meets all requirements stipulated by the Executive Director.

Recommendation 17

12

All leases issued will contain a provision that will enable the Minister for Fisheries to vary the terms of a lease at any time, and specify that the Minister must consult with the lessee before varying the terms of a lease.

Recommendation 18

12

The Minister shall publish all variations to leases in the Government Gazette.

Recommendation 19

12

An initial annual rental fee of \$155 per square nautical mile or part thereof will be applied to aquaculture leases, pending a review of lease fees

ATTACHMENT 1

PART 8 — AQUACULTURE

Persons engaging in aquaculture and related activities to be licensed

90. Except as provided in section 91, a person must not —

- (a) engage in aquaculture;
- (b) if the person is the owner or occupier of private land, sell fish in, or taken from, waters on that land;
- (c) receive or purchase, for the purpose of sale or resale, from the owner or occupier of private land, fish in, or taken from, waters on that land; or
- (d) if the person is not the owner or occupier of private land, take fish from waters on that land for the purpose of sale,

unless the person is authorized to do so by an aquaculture licence.

Penalty: In the case of an individual, for a first offence \$5 000 and for any subsequent offence \$10 000 or, in the case of a body corporate, for a first offence \$10 000 and for any subsequent offence \$20 000.

Exceptions

91. Section 90 does not apply to or in relation to any person by reason only of the person —

- (a) keeping, breeding, hatching, culturing or selling any fish of a prescribed class, for a prescribed purpose or in a prescribed area;
- (b) keeping any fish at a place specified in a fish processor's licence under section 83 (2) for the purpose of processing the fish in accordance with the licence;
- (c) keeping any fish in or on any premises for the purpose of serving the fish as meals to the public, or otherwise for the purpose of consumption, in or on those premises; or
- (d) selling any fish of a prescribed class in, or taken from, a dam or lake on private land in a prescribed area if —
 - (i) the person is the owner or occupier of the land; and

- (ii) the fish are sold to a person who is authorized by an aquaculture licence to purchase the fish.

Grant of aquaculture licence

92. (1) If a person applies to the Executive Director for the grant of an aquaculture licence and the Executive Director is satisfied that —

- (a) the person is a fit and proper person to hold such a licence;
- (b) it is in the better interests of the aquaculture industry to grant the licence;
- (c) the activities to be conducted under the licence are unlikely to adversely affect other fish or the aquatic environment; and
- (d) the activities to be conducted under the licence have been approved by other relevant authorities,

the Executive Director may grant to the person an aquaculture licence.

(2) The licence may authorize the person, or persons acting on that person's behalf, to engage in an activity referred to in section 90.

(3) The Executive Director may seek the advice of such authority or authorities as the Executive Director thinks fit in order to determine whether or not subsection (1) (c) is satisfied.

(4) An aquaculture licence must not be issued in relation to -

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(5) An aquaculture licence must not be issued in relation to -

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

unless the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor approves the granting of the licence.

(6) Subsections (4) and (5) do not affect the validity of -

- (a) a licence issued before the commencement of section 50 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) a licence issued in relation to an area which is affected, after the issue of the licence, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

Duration of licence

93. Except as otherwise provided in this Act or in the licence, an aquaculture licence remains in force for a period of 12 months from the day on which it is granted or renewed.

Renewal of licence

94. (1) If a person applies to the Executive Director for the renewal of an aquaculture licence, the Executive Director, subject to this section and section 143, must renew the licence.

- (2) If the licence is unattached and relates to -
 - (a) part of a marine nature reserve; or
 - (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*,

the licence is to be renewed as a licence which does not apply to those areas.

- (3) If the licence is unattached and relates to -
 - (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
 - (b) an area of a marine management area,

the licence is to be renewed as a licence which does not apply to those areas unless either -

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the renewal is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being

committed by the Governor on the renewal and has taken into account any recommendation of that Minister.

- (4) This section does not affect the validity of a licence -
- (a) renewed before the commencement of section 51 of the *Acts Amendment (Marine Reserves) Act 1997*; or
 - (b) renewed in relation to an area which is affected, after the renewal of the licence, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.
- (5) For the purposes of this section -
- (a) an aquaculture licence is “**unattached**” if it does not relate to any area under an aquaculture lease; and
 - (b) where an aquaculture licence relates in part to areas under an aquaculture lease or leases and in part to areas not under such a lease, the licence is to be treated as 2 separate licences, being -
 - (i) an aquaculture licence in relation to the areas under the lease or leases; and
 - (ii) an aquaculture licence in relation to the areas not under any lease.

Conditions

95. (1) An aquaculture licence is subject to —

- (a) any prescribed conditions; and
- (b) any conditions imposed by the Executive Director under this section.

(2) A licence may be granted, renewed or transferred subject to such conditions as the Executive Director thinks fit and specifies in the licence.

(3) The Executive Director may, at any time, by notice in writing given to a licence holder, delete or vary any conditions of the licence or add new conditions to the licence.

(4) Subsection (3) does not apply to prescribed conditions.

Contravention of condition of licence

96. A person must not contravene a condition of an aquaculture licence.

Penalty: In the case of an individual, for a first offence \$5 000 and for any subsequent offence \$10 000 or, in the case of a body corporate, for a first offence \$10 000 and for any subsequent offence \$20 000.

Grant of aquaculture leases

97. (1) The Minister may grant to any person a lease authorizing that person, or persons acting on that person's behalf, to occupy or use an area of land or waters for the purposes of aquaculture.

(2) A lease must specify the species of fish authorized to be kept, bred, hatched or cultured under the lease.

(3) Subject to the provisions of this Act and the lease, a lease vests in the lessee —

(a) the exclusive right during the currency of the lease —

(i) to keep, breed, hatch and culture the species of fish within the leased area; and

(ii) to take the species of fish from the leased area; and

(b) the ownership of all fish specified in the lease that are within the leased area.

(4) A lease may be —

(a) granted for an initial term not exceeding 21 years; and

(b) renewed by the Minister, subject to section 98A, from time to time for any further period or periods not exceeding 21 years in each case.

(5) A lease may be granted or renewed subject to such terms, covenants and conditions as the Minister thinks fit.

(6) Without limiting subsection (5), a lease may be subject to a condition requiring the payment of —

(a) any rent or other fee to the Minister; or

(b) any security for the observance of any terms, covenants, restrictions or conditions of the lease.

(7) A lease may be varied in the manner provided in the lease.

(8) The Minister may only grant a lease under this section in respect of an area of land and waters vested in the Minister for that purpose or an area of coastal waters.

(9) If the Minister grants a lease under this section, the Minister is to cause notice of the grant to be published in the *Gazette*.

Limitation on granting of leases in certain marine reserves

98. (1) An aquaculture lease must not be granted in relation to -

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(2) An aquaculture lease must not be granted in relation to -

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

unless the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor approves the granting of the lease.

(3) This section does not affect the validity of -

- (a) an aquaculture lease granted or renewed before the commencement of section 53 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) an aquaculture lease granted or renewed in relation to an area which is affected, after the grant or renewal of the lease, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

(4) Subsection (2) does not apply to the granting of an aquaculture lease in relation to an area as to which an aquaculture licence -

- (a) could have been renewed under section 94 (3) (c); or
- (b) has been renewed under section 94 (3) (c) or (d),

as long as -

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the granting of the lease is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the granting of the lease and has taken into account any recommendation of that Minister.

Limitation on renewal of leases in certain marine reserves

98A. (1) If it is proposed to renew an aquaculture lease which relates to an area which is -

- (a) part of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*,

the lease may be renewed only as a lease which does not apply to those areas.

(2) If it is proposed to renew an aquaculture lease which relates to an area which is -

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

the lease may be renewed only as a lease which does not apply to those areas, unless either -

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the renewal is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the renewal and has taken into account any recommendation of that Minister.

(3) This section does not affect the validity of a lease -

- (a) renewed before the commencement of section 53 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) renewed in relation to an area which is affected, after the renewal of the lease, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

Aquaculture licence required in connection with lease

99. (1) An aquaculture lease does not authorize the use of the lease without an aquaculture licence.

(2) If an aquaculture licence authorizing the activity being carried out in the leased area is cancelled or not renewed the lease is, by virtue of this subsection, terminated.

(3) If an aquaculture lease is terminated or expires an aquaculture licence authorizing the activity being carried out in the leased area is, by virtue of this subsection, cancelled.

Termination of lease

100. (1) The Minister may, by notice in writing given to the lessee, terminate the lease if, in the Minister's opinion, the leased 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.

(2) A lease may be terminated on any other grounds provided in the lease and in the manner provided in the lease.

(3) If —

- (a) a lease is terminated or expires; and
- (b) any structure, equipment or fish has not been removed from the leased area within 3 months from the day on which the lease was terminated or expired,

the structure, equipment or fish is, by virtue of this section, forfeited to the Crown.

Prerequisite to grant of lease

101. (1) The Minister must not grant an aquaculture lease unless —

- (a) no notice of objection has been lodged under section 166; or
- (b) the responsible Minister, as defined in section 163, has given his or her advice or recommendation under section 168 to the Minister.

(2) In considering an application for an aquaculture lease the Minister must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 168.

Regulations relating to aquaculture

102. The regulations may —

- (a) regulate aquaculture;
- (b) regulate any activity involving fish that have been produced by means of aquaculture or species of fish that are used for aquaculture;
- (c) provide for matters relating to aquaculture leases;
- (d) require persons who engage in aquaculture or the purchase or sale of fish that have been produced by means of aquaculture or species of fish that are used for aquaculture to —
 - (i) keep specified records; and
 - (ii) submit specified returns at specified times.