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Principles for Grant and Management of Aquaculture Leases in Coastal Waters of Western Australia

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Department of
**Primary Industries and
Regional Development**

Administrative Guideline No. 2, 2020

**Principles for Grant and
Management of Aquaculture
Leases in Coastal Waters
of Western Australia**

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

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Contents

1. Introduction.....	1
2. Legislation.....	2
3. Aquaculture Development Zones.....	3
4. Application and Assessment Process.....	3
5. The Lease Deed.....	4
6. Aquaculture Development Targets	4
7. Aquaculture Lease Fees	5
8. Securities.....	6
9. Supporting Documents.....	6

1. Introduction

Under s.246 of the *Fish Resources Management Act 1994* (FRMA), the Minister for Fisheries (Minister) may issue guidelines for the administration or enforcement of the Act.

This Administrative Guideline (Guideline) sets out the principles and processes for granting and managing aquaculture leases; its purpose is to provide guidance to the Department of Primary Industries and Regional Development (Department) and continued certainty and transparency for the aquaculture industry, stakeholders and the community.

The principles and processes set out in this Guideline do not limit in any way the statutory discretion exercised by the Minister in any particular case. The Minister may exercise discretion based on the merits of each individual case and may take into account matters not set out in this Guideline.

As the peak sector body for the WA aquaculture industry, the Aquaculture Council of Western Australia (ACWA) has provided advice in the development of this Guideline.

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

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 industry, the administrative processes involved in the assessment of aquaculture applications and ongoing management arrangements.

Amendments may be made to this Guideline following the proclamation of the *Aquatic Resources Management Act 2016* (ARMA), including the addition of Pearling licences and leases, which will be dealt with separately following the transition phase and include a review of fees.¹

¹ "Pearling" means the culture of the Australian South Sea pearl oyster (*Pinctada maxima*) that is currently managed under the *Pearling Act 1990*. The aquaculture of all other species of pearl oysters (referred to as non-P. maxima pearl oysters) is currently managed under the *Fish Resources Management Act 1994*.

2. Legislation

The Minister determines applications for aquaculture leases over areas of Western Australia to provide the tenure required to enable the aquaculture activity authorised by an aquaculture licence.² These decisions are made pursuant to relevant sections of the FRMA.

The Minister may grant aquaculture leases under s.97 of the FRMA. The same consultation process set down for aquaculture licences in Administrative Guideline No. 1: *Assessment of Applications for Authorisations for Aquaculture and Pearling in Coastal Waters of Western Australia* (AG 1) will be used to assess applications for aquaculture leases. The Minister will publish notice of the grant of an aquaculture lease in the Government Gazette. There is no right of review.

Aquaculture leases may be granted for an initial period of up to 21 years and renewed for further periods up to 21 years under s.97(4) of the FRMA.

When it is proclaimed, under s.83(1)(a), the ARMA will provide for a condition requiring all aquaculture licence holders to have appropriate tenure over the land or waters to which the aquaculture licence applies. In this regard, “appropriate tenure” is defined in relation to land or WA waters (not private land) as an aquaculture lease.

An aquaculture lease provides the lessee with security in the form of statutory tenure (to conduct the licensed 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 purpose of aquaculture. In that context, an aquaculture lease is different from a standard land lease commonly granted over private land for residential or commercial purposes and in substance constitutes a “licence to occupy”.

The FRMA provides for the grant and renewal of an aquaculture lease, but includes no direct provision to transfer leases. When proclaimed, the ARMA will provide for regulations to be made enabling variations of an aquaculture lease through subdivision, subletting, amalgamation and transfer. As an interim measure, the Department has identified a process to transfer leases under the FRMA. Pursuant to s.99(3) of the FRMA, if an aquaculture lease is terminated or expires an aquaculture licence authorising the activity being carried out in the leased area is cancelled and *vice versa*.

² An aquaculture licence authorises the aquaculture activity and may be granted by the CEO of the Department of Primary Industries and Regional Development; whereas an aquaculture lease provides tenure over the same area of water as the corresponding aquaculture licence and may be granted by the Minister for Fisheries.

3. Aquaculture Development Zones

Persons undertaking aquaculture activities in an aquaculture development zone (ADZ) will require an aquaculture licence and lease. ADZs will generally have in place a strategic environmental approval.³ Aquaculture proponents seeking approval to operate within an ADZ will be required to submit an application for a Derived Proposal to the Environmental Protection Authority (EPA), to ensure the proposal meets requirements of the relevant Ministerial Conditions.⁴

Following the declaration of an ADZ by the Minister, the Department may then invite interested persons to make applications for aquaculture licences and leases within that zone and advise a date by which applications should be made. The Department will then consider applications according to the relevant provisions of the Act and in respect of the relative merits of any competing applications. Following the assessment process, the CEO of the Department and Minister may then grant, respectively, the aquaculture licence and aquaculture lease.

The assessment process for ADZs is outlined in Fisheries Occasional Publication No. 127 *Aquaculture Development Zones in Western Australia – Policy Principles Relating to Considerations for Aquaculture Licences and Leases*.

In the case of application processes for aquaculture licences and leases for areas within ADZs, the process to establish each ADZ will almost invariably include a comprehensive consultation process that includes ACWA, so additional consultation on the application pursuant to AG 1 will not be required. In the event public consultation is not carried out in the establishment of an ADZ, then consultation will be conducted according to AG 1.

4. Application and Assessment Process

Aquaculture lease applications can be made online at the Department's website at:

<http://www.dpir.wa.gov.au>

The information required for a lease application, specified on the application form, is similar to that required for an aquaculture licence application.

As noted above, applications for aquaculture leases issued under s.97 of the FRMA will be assessed according to AG 1. Aquaculture lease applications submitted in conjunction with

³ Aquaculture development zones for marine finfish will usually require a strategic environmental approval; those for filter-feeding shellfish species, or for proposals where no feed is added to the environment, may not.

⁴ A future proposal that was identified in the strategic proposal, which has been referred to and considered by the EPA, and is then declared to be a derived proposal.

aquaculture licence applications will generally undergo concurrent consultation and assessment.

5. The Lease Deed

The lease deed is an instrument executed by the Minister as Lessor and the applicant as Lessee. Among other things, the deed sets out the Lessee's obligations and what constitutes a default event.

A draft lease deed will be provided to the applicant for consideration during the assessment process. A final deed will then be provided to the applicant for execution.

The lease deed will generally include (but may not be limited to) the following key clauses:

- Site location and area
- Term
- Performance
- The lease fee
- Security (if required)
- Termination
- Variation
- Renewal

6. Aquaculture Development Targets

Areas of coastal waters authorised for aquaculture occupy and use a public resource, so it is important to ensure aquaculture licence and lease holders use these areas for the purpose for which they were granted and are actively attempting to conduct the authorised activity in a business-like manner.

Development targets are specified in an Aquaculture Development Plan (ADP) that forms a part of the lease. Lessees are required to meet the targets set in the ADPs. These documents are not intended to dictate how lease holders conduct their businesses, but to assist with managing and confirming “reasonable” development and ensure public resources are being used in a way that is consistent with the expectations of the State, community and aquaculture industry stakeholders.

Fisheries Occasional Publication 134: *Aquaculture Development Plans - Principles and Guidelines Relating to Aquaculture Development Plans to address Performance Criteria for Aquaculture Licences and Leases* provides further information. This document and an ADP template are available on the Department's website at:

As part of the assessment of the aquaculture lease application, the Department will work with applicants to develop an ADP based predominantly on the information provided in their lease applications.

7. Aquaculture Lease Fees

When setting an aquaculture lease fee, the main guiding principle is to balance a fair return to the State for use of the waters, while maintaining an incentive to industry development.

The Minister has determined aquaculture lease fees having regard for the developing nature of the WA industry and prevailing market conditions.

The Government's intent is for aquaculture lease fees to be consistent across the finfish and non-fish industry sectors. The higher rate applied for finfish species acknowledges that, per unit of water area, finfish species generally afford a higher market return than non-fish species. In respect of economic return per unit area, water allocated for finfish production may therefore be considered to have a higher value than water for non-fish. Accordingly, a lower rate is considered appropriate for non-fish operations.

Three tiers of fees are specified over the 21-year lease term in consideration for staged development of operations. The aquaculture lease fee framework is provided below:

Finfish	Non-Finfish
<ul style="list-style-type: none">• \$35/hectare/year (year 1-5)• \$80/hectare/year (year 6-12)• \$160/hectare/year (year 13-21)	<ul style="list-style-type: none">• \$35/hectare/year (year 1-5)• \$50/hectare/year (year 6-12)• \$60/hectare/year (year 13-21)
Minimum fee (total amount) \$1000 per annum	

The fee framework applies to new aquaculture leases and aquaculture lease renewals. Leases that commenced prior to this framework will continue for the term of the lease until time of renewal, at which time the fee may be amended to reflect the framework current at that time.

It should also be noted that the fee framework may not apply to aquaculture leases issued in Port Authority Waters vested in the Minister, as these may be influenced by head lease agreements between the Minister for Fisheries and the Minister for Transport.

For aquaculture licences authorising both finfish and non-fish species, the finfish rate will apply regardless of the species being cultured.

Existing licence holders who will be required to apply for an aquaculture lease under the ARMA will be given the option vary their licences (subject to AG 1) to amend the authorised species or to reduce the size of the area authorised based on their experience to date and business model.

Aquaculture lease fees are calculated at a cost per hectare of the leased area and specified as total amounts per year in the lease deed.

Aquaculture lease holders will be invoiced with the fee to be paid in advance for the coming financial year for the period of 1 July to 30 June. Aquaculture lease holders will be required to pay the fee by 30 September each year as specified in the lease deed. Consideration may be given to quarterly payments for larger fee amounts

8. Securities

A security may be applied to aquaculture leases that may be considered high risk.

In determining a high risk proposal, the Minister will have regard for the following when deciding if a security should be applied:

- The company's standing, location and the history of the company and its directors;
- The culture of new or unproven species and, or, areas;
- The proposed use of new or unproven production technology;
- The proposed use of a significant quantity of aquaculture gear;
- Deployment of aquaculture gear in or near habitats considered vulnerable or with a high conservation value;
- Any other matters the Minister considers appropriate.

Should a security be considered necessary, the terms will be included as a clause in the lease deed.

When a security is not applied, the legislation and lease deed provide sufficient assurances for defaults to the lease and any ensuing costs that the State may incur, including for clean-up. There is provision in the lease deed to terminate a lease if fees and debts are not paid; and there are provisions in the legislation to recover clean-up costs.

9. Supporting Documents

- *Administrative Guideline No. 1: Assessment of Applications for Authorisations for Aquaculture and Pearling in Coastal Waters of Western Australia*

- Fisheries Occasional Publication No. 127 *Aquaculture Development Zones in Western Australia – Policy Principles Relating to Considerations for Aquaculture Licences and Leases.*
- Fisheries Occasional Publication 134: *Aquaculture Development Plans - Principles and Guidelines Relating to Aquaculture Development Plans to address Performance Criteria for Aquaculture Licences and Leases*
- www.dpird.wa.gov.au