



CABINET - SUBJECTS FOR CONSIDERATION, 16 JANUARY 2006 11:00 AM

Not relevant




Not relevant



2 Bills and Regulations in Principle

Not relevant



202

MAFF05/0045CS

Aquaculture Variation Regulations 2006
APPROVED

202

REVISED

CABINET COVER SHEET

again

- 1. **TITLE:** AQUACULTURE VARIATION REGULATIONS 2006
- 2. **MINISTER:** Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
- 3. **PURPOSE:** To seek Cabinet approval for drafting and making of *Aquaculture Variation Regulations 2006* under the *Aquaculture Act 2001* in accordance with the proposed regulations attached as Appendix 1.
- 4. **RELEVANT GOVERNMENT POLICY AND/OR SOUTH AUSTRALIA'S STRATEGIC PLAN TARGET:** The proposal is consistent with *Objective 1: Growing Prosperity* of South Australia's Strategic Plan, by accommodating commercial practices relating to the operation, trade and transfer of aquaculture leases and licences.
- 5. **RESOURCES REQUIRED FOR IMPLEMENTATION:** No additional resources are required for implementation of these regulations, and there is not expected to be any budget impact.
- 6. **COMMUNITY AND ENVIRONMENTAL IMPACT:**

The proposal will allow for the division of aquaculture leases and licences to accommodate commercial farming practices.

The subdivision and trade of aquaculture leases and licences within industry can provide significant benefit to operators and the broader community through efficient utilisation of sites.

The ability to trade in aquaculture leases and licences will not result in any greater concentration of aquaculture activity than has already been approved on existing sites, therefore the proposal does not have any environmental impacts.

The proposed regulations create certainty for holders of certain aquaculture leases and licences, therefore providing greater investment certainty and resultant regional and social benefits.

7. RISKS:

As noted above, the proposal does not allow for grant of additional aquaculture areas as a result of lease or licence divisions, and conditions will be the same as the original lease and licence so there is not considered to be any environmental risk arising from this proposal.

8. CONSULTATION:

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act 2001* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department for Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations.

9. COMMUNICATION STRATEGY:

Less than fifteen aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001* remain current, therefore it is proposed to contact the affected stakeholders by telephone and written correspondence to advise of the effect of the variation regulations.

The processes for divisions of aquaculture leases and licences will be made known by posting details on PIRSA's website, communications with the South Australian Aquaculture Council and articles in industry newsletters. In most instances lease and licence holders wishing to divide leases and licences contact PIRSA Aquaculture's office, at which time the provisions will be described to them, and further details contained in an information pack.

10. URGENCY:

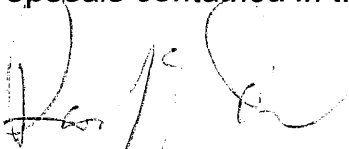
This submission is proposed for the Cabinet meeting on 16 January 2006. The regulations have been prepared in advance due to the urgent need to address issues raised by the Crown Solicitor.

11. RECOMMENDATIONS:

It is recommended that Cabinet:

- 11.1 approves the drafting of *Aquaculture Variation Regulations 2006*, to:
 - 11.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.
 - 11.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.
 - 11.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.
- 11.2 recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.

I declare that I have no actual or potential conflict of interest in relation to the proposals contained in this submission.



Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR STATE/LOCAL GOVERNMENT RELATIONS
MINISTER FOR FORESTS

Date:

4/1/06

Contact Officer: Ian Nightingale
Telephone Number: 6(1) Personal affairs

TO: THE PREMIER FOR CABINET AND EXECUTIVE COUNCIL

RE: AQUACULTURE VARIATION REGULATIONS 2006

1. PROPOSAL

1.1 To seek Cabinet approval for the drafting of *Aquaculture Variation Regulations 2006*, to:

1.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.

1.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.

1.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.

1.2 That Cabinet recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.

2. BACKGROUND

2.1 Primary Industries and Resources SA (PIRSA) Aquaculture has, in recent months, been working closely with the Crown Solicitor's Office to consider the efficient administration of the Act. The Crown Solicitor has advised that there are a number of matters which are not adequately provided for in the existing Act and Regulations, as follows:

2.1.1 a process to allow for the division of leases and licences;

2.1.2 the status of a small number of leases and licences granted pursuant to the transitional provisions of the *Aquaculture Act 2001*; and

2.1.3 the ability for the Minister to issue approvals under the Regulations subject to conditions.

It is proposed to resolve each of these matters in the *Aquaculture Variation Regulations 2006*.

The regulations have been prepared in advance due to the urgent need to address the issues raised by the Crown Solicitor.

2.2 Section 92 of the *Aquaculture Act 2001* requires that the Act have a report prepared on the operation of the Act within five years of its commencement. This report is currently being prepared.

2.3 10 Legal professional privilege

2.4 The need for transfers of divisions to occur arises from industry practice where, in the case of oyster growing for example, some areas do not condition (or fatten) oysters as well as others so existing lease areas are "sub-let" in different growing areas for that purpose. However, an aquaculture licence is personal to the licence holder and cannot be sublicensed.

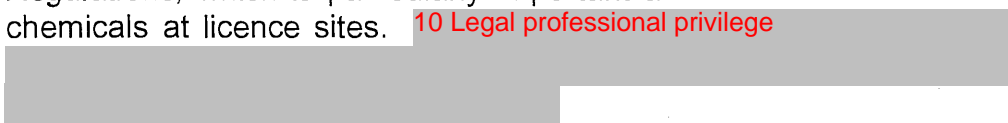
2.5 10 Legal professional privilege

2.6 The proposed regulations prescribe arrangements for the substitution of an existing lease or licence with two or more leases or licences that do not otherwise vary the area, terms or conditions of the original authorisation.

2.7 Further clarity is also sought with respect to aquaculture leases and licences granted during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*. Transitional provisions in the *Aquaculture Act 2001* allowed for the Minister to grant an aquaculture licence, or aquaculture lease and licence, as the case required, to any person entitled to carry on aquaculture operations immediately before the commencement of the Act. These "transitional leases" were issued as Production Leases under the *Aquaculture Act 2001*, as the terms of a Production Lease most closely mirrored entitlements of an Aquaculture Licence issued under the *Fisheries Act 1982*.

2.8 10 Legal professional privilege

these regulations seek to give certainty to the holders of those short term leases and licences granted during the transitional period by putting in place a scheme whereby those lease and licence holders can be granted valid Development Leases and corresponding licences on application, whether or not within an Aquaculture Zone. It would appear that less than fifteen leases and licences are affected.

- 2.9 Finally, the proposed regulations allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations*, which is particularly important as it relates to the use of chemicals at licence sites. 10 Legal professional privilege
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3. DISCUSSION

3.1 Purpose

One of the risks involved in having operators working on site that are not the licence holder is, in the event of a food safety risk causing a particular area to be closed for harvest (under the South Australian Shellfish Quality Assurance Program – SASQAP), it is not possible to identify and directly advise all operators in the area. Likewise, traceability efforts across all aquaculture sectors would be compromised.

- 3.2 Prior to the *Aquaculture Act 2001*, these types of arrangements were dealt with by naming several people on the licence, however, this is not ideal due to the need to seek consent of all parties to the licence if any variation is required. Licence holders are obliged to meet certain standards and submit returns such as Environmental Monitoring Reports and Production Returns, however, where individuals are, for all intents and purposes, acting as separate businesses on one licence, this has proven problematic. If one party did not meet necessary standards, it would be necessary to prosecute all parties to the licence in the event of a serious breach.

- 3.3 The benefits of the division schemes described in the proposed *Aquaculture Variation Regulations 2006* would avoid the difficulties described above.

- 3.4 The proposed regulations will ensure that current operators affected by the incorrect reliance on transitional provisions will have the certainty to continue their business operations with the use of Development Leases while amendments to the *Aquaculture Act 2001* are made to further validate those actions.

- 3.5 The provision relating to conditional Ministerial approvals will allow the safe use of chemicals at aquaculture licence sites.

3.6 Economic, financial and budgetary implications

It is widely accepted that the majority of increase in value and production volume from the aquaculture industry will come from marine based aquaculture sectors. Therefore, in order to meet the targets set in South Australia's Strategic Plan, the South Australian Seafood Food Plan and the National Aquaculture Industry Action Agenda, the aquaculture industry will need access to suitable growing areas and certainty about the ongoing availability of these areas to facilitate forward planning and investment confidence.

The trade of aquaculture leases and licences within industry can provide significant benefit to operators and the broader community through efficient utilisation of sites.

One of the key objectives of the *Aquaculture Act 2001* is to maximise benefits to the community from the State's aquaculture resources. As such, it is in the Government's interest to avoid under utilisation of sites. The ability to divide Development and Production leases and their corresponding licences, and subsequently trade with them encourages optimum use of aquaculture sites. This, in turn, results in greater investment in infrastructure and employment in regional communities.

The ability for divisions of Development and Production leases is of most significance to accommodate the changing needs of the oyster and mussel industries, both of which have shown consistent growth in excess of 10% per annum in recent years.

The grant of valid Development Leases to those issued leases and licences as a result of applications that crossed the transitional period will allow them to proceed with their businesses including provisions for divisions and transfer, as allowed for in other parts of these variation regulations and the Act.

3.7 Required resources

Costs associated with divisions of Development and Production Leases would be fully cost recovered as they are of direct benefit to the parties involved in the transaction so there will not be a material budget impact for government.

3.8 Staffing implications.

It is anticipated that the transactions can be performed within existing staffing levels.

3.9 South Australia's Strategic Plan

The proposed *Aquaculture Variation Regulations 2006* are consistent with Objective 1 of the **State Strategic Plan**, "Growing Prosperity". In particular, it relates to Target 1.12, Exports which aims to treble the value of **South Australia's** export income to \$25 billion by 2013.

The food industry aims to contribute \$7.5 billion to this target by 2013, with the seafood industry aiming for export growth of 8.3% per annum to reach a target of \$1 billion by 2012/13, as identified in the **South Australian Seafood Plan**.

As noted earlier, the impacts of the proposed regulations are most significant to the oyster and mussel industries which have shown consistently high growth in past years, which also highlights further domestic and export market opportunities. Government can support this continued growth by responding to the changing needs of these growing sectors.

3.10 Impact on the community and the environment

The division of aquaculture Development and Production leases and their corresponding licences will not result in greater concentration of aquaculture activity than has already been approved on existing sites, therefore the proposal does not have any environmental impacts.

Benefits to the community of allowing divisions and naming of actual operators on leases and licences would become obvious if a food safety event were to occur, as all current operators could be identified and contacted to prevent sale of potentially dangerous foods. South Australia has been fortunate not to experience any shellfish food safety events in the past, largely due to the successful South Australian Shellfish Quality Assurance Program, however experience of other States has shown the potentially disastrous effects such events can have ranging from poisoning to death and the resulting lack of confidence in the industry.

Clarifying leasing and licensing arrangements and allowing for division of Development and Production leases and their corresponding licences will see greater investment in the aquaculture industry, greater diversity in the industry through new entrants and greater flexibility for existing operators.

3.11 Risk Management Strategy

While the proposed variation regulations allow for the grant of Development Leases to clarify arrangements for those leases previously granted during transition from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, amendments to the *Aquaculture Act 2001* will soon be proposed to further validate previous administrative actions.

3.12 **Consultation**

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act 2001* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department for Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations.

3.13 **Implementation Plan**

The proposal can be implemented immediately upon approval, according to industry demand for divisions of Development and Production leases and their corresponding licences.

The grant of Development Leases to lease holders who applied for a licence prior to the introduction of the *Aquaculture Act 2001* will be actioned following receipt of applications from the affected parties.

3.14 **Communication Strategy**

Less than fifteen aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001* remain current, therefore it is proposed to contact the affected stakeholders by telephone and written correspondence to advise of the effect of the variation regulations.

The processes for performing divisions of aquaculture leases and licences will be made known by posting details on PIRSA's website, communications with the South Australian Aquaculture Council and articles in industry newsletters. In most instances lease and licence holders wishing to divide leases and licences contact PIRSA Aquaculture's office, at which time the provisions will be described to them, and further details contained in an information pack.

No additional resources are required to implement this communications strategy.

3.15 **Executive Council**

The proposed *Aquaculture Variation Regulations 2006* will require the approval of Her Excellency the Governor in Executive Council after Cabinet approval.

MINUTES forming ENCLOSURE to

MAFF 05/0045 CS

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4. RECOMMENDATIONS

It is recommended that Cabinet:

4.1 approves the drafting of *Aquaculture Variation Regulations 2006*, to:

4.1.1 allow the division of *aquaculture* leases and licences to accommodate commercial business practices.

4.1.2 give certainty to *aquaculture* leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.

4.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on *aquaculture* licence sites.

4.2 recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.



Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR STATE/LOCAL GOVERNMENT RELATIONS
MINISTER FOR FORESTS

Date:

4/1/06

In Cabinet

16 JAN 2006

APPROVED

PREMIER

TO: MEMBERS, LEGISLATIVE REVIEW COMMITTEE

RE: AQUACULTURE ACT 2001 – AMENDMENT TO REGULATIONS

PROPOSAL

The proposed *Aquaculture Variation Regulations 2006* address a number of matters which are not adequately provided for in the existing *Aquaculture Act 2001* (“the Act”) and *Aquaculture Regulations 2005*. The *Aquaculture Variation Regulations 2006* will:

- provide a process to allow for the division of leases and licences;
- clarify the status of a small number of leases and licences granted pursuant to the transitional provisions of the *Aquaculture Act*; and
- allow the Minister to issue approvals under the *Regulations* subject to conditions.

The proposed new regulations will benefit industry by accommodating commercial practices relating to the operation, trade and transfer of aquaculture leases and licences.

BACKGROUND

Division of leases and licences

The *Aquaculture Act* allows for the transfer of aquaculture development and production leases and their corresponding licences. However, the Act does not prescribe arrangements for divisions of development and production leases and corresponding licences that would subsequently allow for parts of original leases or licences to be transferred.

The need for transfers of divisions to occur arises from industry practice where, in the case of oyster growing for example, some areas do not condition (or fatten) oysters as well as others so existing lease areas are “sub-let” in different growing areas for that purpose. However, an aquaculture licence is personal to the licence holder and cannot be sublicensed.

The proposed regulations prescribe arrangements for the substitution of an existing lease or licence with two or more leases or licences that do not otherwise vary the area, terms or conditions of the original authorisation.

Leases and licences granted pursuant to the transitional provisions

Further clarity is also sought with respect to aquaculture leases and licences granted during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act* in 2002. Transitional provisions in the *Aquaculture Act* allowed for the Minister to grant an aquaculture licence, or aquaculture lease and licence, as the case required, to any person entitled to carry on aquaculture operations immediately before the commencement of the Act. A number of production leases were granted to applicants who were at a very late stage of the application process under the *Fisheries Act* but who had not formally been given an entitlement to carry on aquaculture operations.

The new regulations seek to give certainty to the holders of those short term leases and licences granted during the transitional period by putting in place a scheme whereby those lease and licence holders can be granted valid development leases and corresponding

licences on application, whether or not within an Aquaculture Zone. It would appear that a total of thirteen leases and licences are affected.

Conditional authorisations

The proposed regulations allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations*, which is particularly important as it relates to the use of chemicals at licence sites. It is desirable for the ability of the Minister to attach conditions to approvals to be specifically included in the Regulations.

Consultation

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department of Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations. The consultation was more limited than otherwise would be the case due to the urgency of rectifying the matters outlined below.

Urgency

The Minister for Agriculture, Food and Fisheries has certified that it is necessary that the regulations come into operation as set out in the regulations as required by section 10AA(2) of the *Subordinate Legislation Act 1978*. The most urgent aspect of the regulations is the need to be able to grant valid leases to the certain holders of leases granted in reliance of the transitional provisions in 2002 (as discussed above). Approximately thirteen applicants were granted production leases instead of pilot leases at this time. Had these applicants been granted the pilot leases they were entitled to in 2002, they would now expect to hold development leases. By fast tracking the application process, the lease holders will be placed in the same position as if they had been granted pilot leases in 2002 and will have leases that cannot have their validity challenged.

Parliamentary Counsel has prepared the Regulations and has issued a Certificate of Validity.



Ian Nightingale
EXECUTIVE DIRECTOR, AQUACULTURE DIVISION
PRIMARY INDUSTRIES AND RESOURCES SA

Date: 12 / 1 / 2006

Contact Officer: Ian Nightingale
Executive Director, Aquaculture Division
Primary Industries and Resources SA

Telephone: 6(1) Personal affairs

CERTIFICATE OF VALIDITY

I certify that the proposed regulations under the

AQUACULTURE ACT 2001

attached to this certificate and initialled by me are within the powers conferred by that Act.



for **PARLIAMENTARY COUNSEL**
21 December 2005

CERTIFICATE OF EARLY COMMENCEMENT

PURSUANT to section 10AA(2) of the *Subordinate Legislation Act 1978*, I certify that, in my opinion, it is necessary or appropriate that the *Aquaculture Variation Regulations 2006* under the *Aquaculture Act 2001* (copy attached and initialled by me) come into operation as set out in those regulations.

MAFF05/0045CS

Minister for Agriculture, Food and Fisheries



South Australia

Aquaculture Variation Regulations 2006

under the *Aquaculture Act 2001*

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 - 28B Division of licence area
 - 6 Variation of regulation 31—Exemptions
 - 7 Variation of Schedule 1—Fees
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Aquaculture Variation Regulations 2006*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Aquaculture Regulations 2005*

4—Insertion of regulation 3A

After regulation 3 insert:

3A—Approval of Minister

- (1) An approval given by the Minister under these regulations to a licensee may be subject to conditions.

- (2) A licensee must comply with the conditions of an approval given to the licensee by the Minister under these regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

5—Insertion of regulations 28A and 28B

Before regulation 29 insert:

28A—Division of lease area

- (1) The Minister may, on application by the holder of a development lease or production lease for division of the lease area into separate lease areas—
- (a) substitute the original lease with leases of the same kind over the separate lease areas; and
 - (b) substitute the corresponding licences relating to the original lease with corresponding licences relating to the substituted leases.
- (2) The following rules apply to the substitution of leases and corresponding licences under this regulation:
- (a) there must be no change in the persons holding a lease or corresponding licence;
 - (b) the substituted leases must be for the balance of the term of the original lease;
 - (c) the lease areas of the substituted leases must together make up the lease area of the original lease;
 - (d) the area in which a licensee is authorised to carry on aquaculture must not be altered;
 - (e) the conditions of a substituted lease or corresponding licence must be the same as the conditions of the original lease or corresponding licence, except for conditions designating a lease area or licence area, conditions relating to marking out the boundaries of a lease area or licence area or conditions relating a licence to a lease.
- (3) An application for division of a lease area into separate lease areas—
- (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the lease area of the original lease; and
 - (ii) the licence areas of the corresponding licences relating to the original lease; and
 - (iii) the separate lease areas into which the original lease area is to be divided; and

- (iv) the licence areas of the corresponding licences that are to relate to the substituted leases over the separate lease areas; and
- (c) must be accompanied by the fee set out in Schedule 1.
- (4) The applicant must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.
- (5) While a licensee continues to hold a number of corresponding licences over adjoining licence areas as a result of the substitution of the licences under this regulation, the licences will, for the purposes of these regulations, be treated as a single licence held by the licensee over the aggregate of the adjoining licence areas.

28B—Division of licence area

- (1) The Minister may, on application by the holder of an aquaculture licence for division of the licence area into separate licence areas, substitute the original licence with licences over the separate licence areas.
- (2) The following rules apply to the substitution of licences under this regulation:
 - (a) there must be no change in the persons holding a licence;
 - (b) the substituted licences must be for the balance of the term of the original licence;
 - (c) the licence areas of the substituted licences must together make up the licence area of the original licence;
 - (d) the conditions of a substituted licence must be the same as the conditions of the original licence, except for conditions designating a licence area or conditions relating to marking out the boundaries of a licence area.
- (3) An application for division of a licence area into separate licence areas—
 - (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the licence area of the original licence; and
 - (ii) the separate licence areas into which the original licence area is to be divided; and
 - (c) must be accompanied by the fee set out in Schedule 1.
- (4) The applicant must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

6—Variation of regulation 31—Exemptions

Regulation 31—after subregulation (3) insert:

- (4) The following exemptions apply in relation to an application by a transitional lessee for the grant of a development lease over the transitional lease area, and an application by a transitional licensee for the grant of a corresponding licence relating to such a development lease:
 - (a) section 32 of the Act does not apply—the development lease may be granted to the transitional lessee in respect of an area whether or not it comprises or includes State waters within an aquaculture zone;
 - (b) section 33 of the Act does not apply—the development lease may be granted to the transitional lessee without an allocation process being undertaken;
 - (c) section 50(1)(b) of the Act does not apply—the Minister may decide that a corresponding licence will be granted containing specified conditions in connection with the application by the transitional lessee for the development lease without causing public notice of the application to be published.
- (5) For the purposes of this regulation—
 - (a) a *transitional lease* is a production lease purportedly granted under clause 3 of the Schedule of the Act to a person who was, immediately before the commencement of that clause, an applicant for a licence authorising aquaculture operations; and
 - (b) a *transitional lessee* is a person who, immediately before the commencement of this subregulation, held a transitional lease or a lease derived from a transitional lease (whether or not through a purported transfer of the lease and whether or not there has been any purported alteration of the boundaries of the lease area); and
 - (c) a lease will be taken to be *derived* from a transitional lease if the lease is one of a number of leases purportedly substituted for the transitional lease; and
 - (d) a *transitional licensee* is a person who, immediately before the commencement of this subregulation, held a corresponding licence purportedly granted in relation to a transitional lease or a lease derived from a transitional lease.

7—Variation of Schedule 1—Fees

Schedule 1—after paragraph (g) insert:

- (h) application for division of lease area into separate lease areas (regulation 28A)—\$745;

- (i) application for division of licence area into separate licence areas (regulation 28B)—\$745.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2006

MAFF05/0045CS

7. RISKS:

As noted above, the proposal does not allow for grant of additional aquaculture areas as a result of lease or licence divisions, and conditions will be the same as the original lease and licence so there is not considered to be any environmental risk arising from this proposal.

8. CONSULTATION:

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act 2001* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department for Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations.

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The processes for divisions of aquaculture leases and licences will be made known by posting details on PIRSA's website, communications with the South Australian Aquaculture Council and articles in industry newsletters. In most instances lease and licence holders wishing to divide leases and licences contact PIRSA Aquaculture's office, at which time the provisions will be described to them, and further details contained in an information pack.

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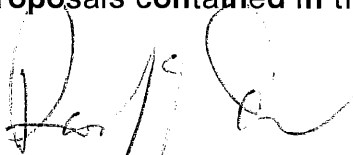
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 - 11.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.
- 11.2 recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.

I declare that I have **no actual or potential conflict of interest** in relation to the proposals contained in this submission.



Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR STATE/LOCAL GOVERNMENT RELATIONS
MINISTER FOR FORESTS

Date:

4/1/06

Contact Officer: Ian Nightingale
Telephone Number: 6(1) Personal affairs

TO: THE PREMIER FOR CABINET AND EXECUTIVE COUNCIL

RE: AQUACULTURE VARIATION REGULATIONS 2006

1. PROPOSAL

1.1 To seek Cabinet approval for the drafting of *Aquaculture Variation Regulations 2006*, to:

1.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.

1.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.

1.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.

1.2 That Cabinet recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.

2. BACKGROUND

2.1 Primary Industries and Resources SA (PIRSA) Aquaculture has, in recent months, been working closely with the Crown Solicitor's Office to consider the efficient administration of the Act. The Crown Solicitor has advised that there are a number of matters which are not adequately provided for in the existing Act and Regulations, as follows:

2.1.1 a process to allow for the division of leases and licences;

2.1.2 the status of a small number of leases and licences granted pursuant to the transitional provisions of the *Aquaculture Act 2001*; and

2.1.3 the ability for the Minister to issue approvals under the Regulations subject to conditions.

It is proposed to resolve each of these matters in the *Aquaculture Variation Regulations 2006*.

The regulations have been prepared in advance due to the urgent need to address the issues raised by the Crown Solicitor.

2.2 Section 92 of the *Aquaculture Act 2001* requires that the Act have a report prepared on the operation of the Act within five years of its commencement. This report is currently being prepared.

2.3 10 Legal professional privilege

2.4 The need for transfers of divisions to occur arises from industry practice where, in the case of oyster growing for example, some areas do not condition (or fatten) oysters as well as others so existing lease areas are "sub-let" in different growing areas for that purpose. However, an aquaculture licence is personal to the licence holder and cannot be sublicensed.

2.5 10 Legal professional privilege

2.6 The proposed regulations prescribe arrangements for the substitution of an existing lease or licence with two or more leases or licences that do not otherwise vary the area, terms or conditions of the original authorisation.

2.7 Further clarity is also sought with respect to aquaculture leases and licences granted during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*. Transitional provisions in the *Aquaculture Act 2001* allowed for the Minister to grant an aquaculture licence, or aquaculture lease and licence, as the case required, to any person entitled to carry on aquaculture operations immediately before the commencement of the Act. These "transitional leases" were issued as Production Leases under the *Aquaculture Act 2001*, as the terms of a Production Lease most closely mirrored entitlements of an Aquaculture Licence issued under the *Fisheries Act 1982*.

2.8 10 Legal professional privilege

these regulations seek to give certainty to the holders of those short term leases and licences granted during the transitional period by putting in place a scheme whereby those lease and licence holders can be granted valid Development Leases and corresponding licences on application, whether or not within an Aquaculture Zone. It would appear that less than fifteen leases and licences are affected.

- 2.9 Finally, the proposed regulations allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations*, which is particularly important as it relates to the use of chemicals at licence sites. 10 Legal professional privilege

3. DISCUSSION

3.1 Purpose

One of the risks involved in having operators working on site that are not the licence holder is, in the event of a food safety risk causing a particular area to be closed for harvest (under the South Australian Shellfish Quality Assurance Program – SASQAP), it is not possible to identify and directly advise all operators in the area. Likewise, traceability efforts across all aquaculture sectors would be compromised.

- 3.2 Prior to the *Aquaculture Act 2001*, these types of arrangements were dealt with by naming several people on the licence, however, this is not ideal due to the need to seek consent of all parties to the licence if any variation is required. Licence holders are obliged to meet certain standards and submit returns such as Environmental Monitoring Reports and Production Returns, however, where individuals are, for all intents and purposes, acting as separate businesses on one licence, this has proven problematic. If one party did not meet necessary standards, it would be necessary to prosecute all parties to the licence in the event of a serious breach.

- 3.3 The benefits of the division schemes described in the proposed *Aquaculture Variation Regulations 2006* would avoid the difficulties described above.

- 3.4 The proposed regulations will ensure that current operators affected by the incorrect reliance on transitional provisions will have the certainty to continue their business operations with the use of Development Leases while amendments to the *Aquaculture Act 2001* are made to further validate those actions.

- 3.5 The provision relating to conditional Ministerial approvals will allow the safe use of chemicals at aquaculture licence sites.

3.6 Economic, financial and budgetary implications

It is widely accepted that the majority of increase in value and production volume from the aquaculture industry will come from marine based aquaculture sectors. Therefore, in order to meet the targets set in South Australia's Strategic Plan, the South Australian Seafood Food Plan and the National Aquaculture Industry Action Agenda, the aquaculture industry will need access to suitable growing areas and certainty about the ongoing availability of these areas to facilitate forward planning and investment confidence.

The trade of aquaculture leases and licences within industry can provide significant benefit to operators and the broader community through efficient utilisation of sites.

One of the key objectives of the *Aquaculture Act 2001* is to maximise benefits to the community from the State's aquaculture resources. As such, it is in the Government's interest to avoid under utilisation of sites. The ability to divide Development and Production leases and their corresponding licences, and subsequently trade with them encourages optimum use of aquaculture sites. This, in turn, results in greater investment in infrastructure and employment in regional communities.

The ability for divisions of Development and Production leases is of most significance to accommodate the changing needs of the oyster and mussel industries, both of which have shown consistent growth in excess of 10% per annum in recent years.

The grant of valid Development Leases to those issued leases and licences as a result of applications that crossed the transitional period will allow them to proceed with their businesses including provisions for divisions and transfer, as allowed for in other parts of these variation regulations and the Act.

3.7 Required resources

Costs associated with divisions of Development and Production Leases would be fully cost recovered as they are of direct benefit to the parties involved in the transaction so there will not be a material budget impact for government.

3.8 Staffing implications.

It is anticipated that the transactions can be performed within existing staffing levels.

3.9 South Australia's Strategic Plan

The proposed *Aquaculture Variation Regulations 2006* are consistent with Objective 1 of the State Strategic Plan, "Growing Prosperity". In particular, it relates to Target 1.12, Exports which aims to treble the value of South Australia's export income to \$25 billion by 2013.

The food industry aims to contribute \$7.5 billion to this target by 2013, with the seafood industry aiming for export growth of 8.3% per annum to reach a target of \$1 billion by 2012/13, as identified in the South Australian Seafood Plan.

As noted earlier, the impacts of the proposed regulations are most significant to the oyster and mussel industries which have shown consistently high growth in past years, which also highlights further domestic and export market opportunities. Government can support this continued growth by responding to the changing needs of these growing sectors.

3.10 Impact on the community and the environment

The division of aquaculture Development and Production leases and their corresponding licences will not result in greater concentration of aquaculture activity than has already been approved on existing sites, therefore the proposal does not have any environmental impacts.

Benefits to the community of allowing divisions and naming of actual operators on leases and licences would become obvious if a food safety event were to occur, as all current operators could be identified and contacted to prevent sale of potentially dangerous foods. South Australia has been fortunate not to experience any shellfish food safety events in the past, largely due to the successful South Australian Shellfish Quality Assurance Program, however experience of other States has shown the potentially disastrous effects such events can have ranging from poisoning to death and the resulting lack of confidence in the industry.

Clarifying leasing and licensing arrangements and allowing for division of Development and Production leases and their corresponding licences will see greater investment in the aquaculture industry, greater diversity in the industry through new entrants and greater flexibility for existing operators.

3.11 Risk Management Strategy

While the proposed variation regulations allow for the grant of Development Leases to clarify arrangements for those leases previously granted during transition from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, amendments to the *Aquaculture Act 2001* will soon be proposed to further validate previous administrative actions.

3.12 Consultation

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act 2001* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department for Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations.

3.13 Implementation Plan

The proposal can be implemented immediately upon approval, according to industry demand for divisions of Development and Production leases and their corresponding licences.

The grant of Development Leases to lease holders who applied for a licence prior to the introduction of the *Aquaculture Act 2001* will be actioned following receipt of applications from the affected parties.

3.14 Communication Strategy

Less than fifteen aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001* remain current, therefore it is proposed to contact the affected stakeholders by telephone and written correspondence to advise of the effect of the variation regulations.

The processes for performing divisions of aquaculture leases and licences will be made known by posting details on PIRSA's website, communications with the South Australian Aquaculture Council and articles in industry newsletters. In most instances lease and licence holders wishing to divide leases and licences contact PIRSA Aquaculture's office, at which time the provisions will be described to them, and further details contained in an information pack.

No additional resources are required to implement this communications strategy.

3.15 Executive Council

The proposed *Aquaculture Variation Regulations 2006* will require the approval of Her Excellency the Governor in Executive Council after Cabinet approval.

MINUTES forming ENCLOSURE to**MAFF 05/0045 CS****4. RECOMMENDATIONS**

It is recommended that Cabinet:

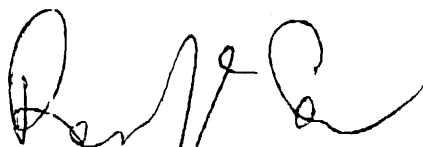
4.1 approves the drafting of *Aquaculture Variation Regulations 2006*, to:

4.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.

4.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.

4.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.

4.2 recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.



Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR STATE/LOCAL GOVERNMENT RELATIONS
MINISTER FOR FORESTS

Date:

4/1/06

CERTIFICATE OF VALIDITY

I certify that the proposed regulations under the

AQUACULTURE ACT 2001

attached to this certificate and initialled by me are within the powers conferred by that Act.



Handwritten signature in black ink, appearing to be 'B. J. P.' or similar, written over the printed text.

for **PARLIAMENTARY COUNSEL**

21 December 2005

CERTIFICATE OF EARLY COMMENCEMENT

PURSUANT to section 10AA(2) of the *Subordinate Legislation Act 1978*, I certify that, in my opinion, it is necessary or appropriate that the *Aquaculture Variation Regulations 2006* under the *Aquaculture Act 2001* (copy attached and initialled by me) come into operation as set out in those regulations.

MAFF05/0045CS

Minister for Agriculture, Food and Fisheries

South Australia

Aquaculture Variation Regulations 2006

under the *Aquaculture Act 2001*

Contents

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 - 5 Insertion of regulations 28A and 28B
28A Division of lease area
28B Division of licence area
 - 6 Variation of regulation 31—Exemptions
 - 7 Variation of Schedule 1—Fees
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Aquaculture Variation Regulations 2006*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Aquaculture Regulations 2005*

4—Insertion of regulation 3A

After regulation 3 insert:

3A—Approval of Minister

- (1) An approval given by the Minister under these regulations to a licensee may be subject to conditions.

- (2) A licensee must comply with the conditions of an approval given to the licensee by the Minister under these regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

5—Insertion of regulations 28A and 28B

Before regulation 29 insert:

28A—Division of lease area

- (1) The Minister may, on application by the holder of a development lease or production lease for division of the lease area into separate lease areas—
- (a) substitute the original lease with leases of the same kind over the separate lease areas; and
 - (b) substitute the corresponding licences relating to the original lease with corresponding licences relating to the substituted leases.
- (2) The following rules apply to the substitution of leases and corresponding licences under this regulation:
- (a) there must be no change in the persons holding a lease or corresponding licence;
 - (b) the substituted leases must be for the balance of the term of the original lease;
 - (c) the lease areas of the substituted leases must together make up the lease area of the original lease;
 - (d) the area in which a licensee is authorised to carry on aquaculture must not be altered;
 - (e) the conditions of a substituted lease or corresponding licence must be the same as the conditions of the original lease or corresponding licence, except for conditions designating a lease area or licence area, conditions relating to marking out the boundaries of a lease area or licence area or conditions relating a licence to a lease.
- (3) An application for division of a lease area into separate lease areas—
- (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the lease area of the original lease; and
 - (ii) the licence areas of the corresponding licences relating to the original lease; and
 - (iii) the separate lease areas into which the original lease area is to be divided; and

- (iv) the licence areas of the corresponding licences that are to relate to the substituted leases over the separate lease areas; and
- (c) must be accompanied by the fee set out in Schedule 1.
- (4) The applicant must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.
- (5) While a licensee continues to hold a number of corresponding licences over adjoining licence areas as a result of the substitution of the licences under this regulation, the licences will, for the purposes of these regulations, be treated as a single licence held by the licensee over the aggregate of the adjoining licence areas.

28B—Division of licence area

- (1) The Minister may, on application by the holder of an aquaculture licence for division of the licence area into separate licence areas, substitute the original licence with licences over the separate licence areas.
- (2) The following rules apply to the substitution of licences under this regulation:
 - (a) there must be no change in the persons holding a licence;
 - (b) the substituted licences must be for the balance of the term of the original licence;
 - (c) the licence areas of the substituted licences must together make up the licence area of the original licence;
 - (d) the conditions of a substituted licence must be the same as the conditions of the original licence, except for conditions designating a licence area or conditions relating to marking out the boundaries of a licence area.
- (3) An application for division of a licence area into separate licence areas—
 - (a) must be made to the Minister in the manner and form required by the Minister; and
 - (b) must be accompanied by a plan delineating—
 - (i) the licence area of the original licence; and
 - (ii) the separate licence areas into which the original licence area is to be divided; and
 - (c) must be accompanied by the fee set out in Schedule 1.
- (4) The applicant must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

6—Variation of regulation 31—Exemptions

Regulation 31—after subregulation (3) insert:

- (4) The following exemptions apply in relation to an application by a transitional lessee for the grant of a development lease over the transitional lease area, and an application by a transitional licensee for the grant of a corresponding licence relating to such a development lease:
 - (a) section 32 of the Act does not apply—the development lease may be granted to the transitional lessee in respect of an area whether or not it comprises or includes State waters within an aquaculture zone;
 - (b) section 33 of the Act does not apply—the development lease may be granted to the transitional lessee without an allocation process being undertaken;
 - (c) section 50(1)(b) of the Act does not apply—the Minister may decide that a corresponding licence will be granted containing specified conditions in connection with the application by the transitional lessee for the development lease without causing public notice of the application to be published.
- (5) For the purposes of this regulation—
 - (a) a *transitional lease* is a production lease purportedly granted under clause 3 of the Schedule of the Act to a person who was, immediately before the commencement of that clause, an applicant for a licence authorising aquaculture operations; and
 - (b) a *transitional lessee* is a person who, immediately before the commencement of this subregulation, held a transitional lease or a lease derived from a transitional lease (whether or not through a purported transfer of the lease and whether or not there has been any purported alteration of the boundaries of the lease area); and
 - (c) a lease will be taken to be *derived* from a transitional lease if the lease is one of a number of leases purportedly substituted for the transitional lease; and
 - (d) a *transitional licensee* is a person who, immediately before the commencement of this subregulation, held a corresponding licence purportedly granted in relation to a transitional lease or a lease derived from a transitional lease.

7—Variation of Schedule 1—Fees

Schedule 1—after paragraph (g) insert:

- (h) application for division of lease area into separate lease areas (regulation 28A)—\$745;

- (i) application for division of licence area into separate licence areas (regulation 28B)—\$745.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council

on

No of 2006

MAFF05/0045CS

TO: MEMBERS, LEGISLATIVE REVIEW COMMITTEE

RE: AQUACULTURE ACT 2001 – AMENDMENT TO REGULATIONS

PROPOSAL

The proposed *Aquaculture Variation Regulations 2006* address a number of matters which are not adequately provided for in the existing *Aquaculture Act 2001* ("the Act") and *Aquaculture Regulations 2005*. The *Aquaculture Variation Regulations 2006* will:

- provide a process to allow for the division of leases and licences;
- clarify the status of a small number of leases and licences granted pursuant to the transitional provisions of the *Aquaculture Act*; and
- allow the Minister to issue approvals under the *Regulations* subject to conditions.

The proposed new regulations will benefit industry by accommodating commercial practices relating to the operation, trade and transfer of aquaculture leases and licences.

BACKGROUND

Division of leases and licences

The *Aquaculture Act* allows for the transfer of aquaculture development and production leases and their corresponding licences. However, the Act does not prescribe arrangements for divisions of development and production leases and corresponding licences that would subsequently allow for parts of original leases or licences to be transferred.

The need for transfers of divisions to occur arises from industry practice where, in the case of oyster growing for example, some areas do not condition (or fatten) oysters as well as others so existing lease areas are "sub-let" in different growing areas for that purpose. However, an aquaculture licence is personal to the licence holder and cannot be sublicensed.

The proposed regulations prescribe arrangements for the substitution of an existing lease or licence with two or more leases or licences that do not otherwise vary the area, terms or conditions of the original authorisation.

Leases and licences granted pursuant to the transitional provisions

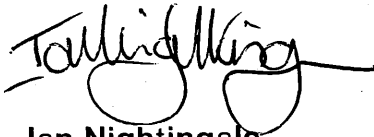
Further clarity is also sought with respect to aquaculture leases and licences granted during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act* in 2002. Transitional provisions in the *Aquaculture Act* allowed for the Minister to grant an aquaculture licence, or aquaculture lease and licence, as the case required, to any person entitled to carry on aquaculture operations immediately before the commencement of the Act. A number of production leases were granted to applicants who were at a very late stage of the application process under the *Fisheries Act* but who had not formally been given an entitlement to carry on aquaculture operations.

The new regulations seek to give certainty to the holders of those short term leases and licences granted during the transitional period by putting in place a scheme whereby those lease and licence holders can be granted valid development leases and corresponding licences on application, whether or not within an *Aquaculture Zone*. It would appear that a total of thirteen leases and licences are affected.

Conditional authorisations

The proposed regulations allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations*, which is particularly important as it relates to the use of chemicals at licence sites. It is desirable for the ability of the Minister to attach conditions to approvals to be specifically included in the Regulations.

Parliamentary Counsel has prepared the Regulations and has issued a Certificate of Validity.



Ian Nightingale
EXECUTIVE DIRECTOR, AQUACULTURE DIVISION
PRIMARY INDUSTRIES AND RESOURCES SA

Date: 5 / 1 / 2005

Contact Officer: *Ian Nightingale*
Executive Director, Aquaculture Division
Primary Industries and Resources SA

Telephone: 6(1) Personal affairs

7. RISKS:

As noted above, the proposal does not allow for grant of additional aquaculture areas as a result of lease or licence divisions, and conditions will be the same as the original lease and licence so there is not considered to be any environmental risk arising from this proposal.

8. CONSULTATION:

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act 2001* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department for Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations.

9. COMMUNICATION STRATEGY:

Less than fifteen aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001* remain current, therefore it is proposed to contact the affected stakeholders by telephone and written correspondence to advise of the effect of the variation regulations.

The processes for divisions of aquaculture leases and licences will be made known by posting details on PIRSA's website, communications with the South Australian Aquaculture Council and articles in industry newsletters. In most instances lease and licence holders wishing to divide leases and licences contact PIRSA Aquaculture's office, at which time the provisions will be described to them, and further details contained in an information pack.

10. URGENCY:

This submission is proposed for the Cabinet meeting on 16 January 2006. The regulations have been prepared in advance due to the urgent need to address issues raised by the Crown Solicitor.

11. RECOMMENDATIONS:

It is recommended that Cabinet:

- 11.1 approves the drafting of *Aquaculture Variation Regulations 2006*, to:
- 11.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.
 - 11.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.
 - 11.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.
- 11.2 recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.

I declare that I have no actual or potential conflict of interest in relation to the proposals contained in this submission.



Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR STATE/LOCAL GOVERNMENT RELATIONS
MINISTER FOR FORESTS

Date:

4/1/06

Contact Officer: Ian Nightingale
Telephone Number: 08 8226 0314

TO: THE PREMIER FOR CABINET AND EXECUTIVE COUNCIL

RE: AQUACULTURE VARIATION REGULATIONS 2006

1. PROPOSAL

1.1 To seek Cabinet approval for the drafting of *Aquaculture Variation Regulations 2006*, to:

1.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.

1.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.

1.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.

1.2 That Cabinet recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.

2. BACKGROUND

2.1 Primary Industries and Resources SA (PIRSA) Aquaculture has, in recent months, been working closely with the Crown Solicitor's Office to consider the efficient administration of the Act. The Crown Solicitor has advised that there are a number of matters which are not adequately provided for in the existing Act and Regulations, as follows:

2.1.1 a process to allow for the division of leases and licences;

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2.1.3 the ability for the Minister to issue approvals under the Regulations subject to conditions.

It is proposed to resolve each of these matters in the *Aquaculture Variation Regulations 2006*.

The regulations have been prepared in advance due to the urgent need to address the issues raised by the Crown Solicitor.

2.2 Section 92 of the *Aquaculture Act 2001* requires that the Act have a report prepared on the operation of the Act within five years of its commencement. This report is currently being prepared.

2.3 10 Legal professional privilege

2.4 The need for transfers of divisions to occur arises from industry practice where, in the case of oyster growing for example, some areas do not condition (or fatten) oysters as well as others so existing lease areas are "sub-let" in different growing areas for that purpose. However, an aquaculture licence is personal to the licence holder and cannot be sublicensed.

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2.6 The proposed regulations prescribe arrangements for the substitution of an existing lease or licence with two or more leases or licences that do not otherwise vary the area, terms or conditions of the original authorisation.

2.7 Further clarity is also sought with respect to aquaculture leases and licences granted during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*. Transitional provisions in the *Aquaculture Act 2001* allowed for the Minister to grant an aquaculture licence, or aquaculture lease and licence, as the case required, to any person entitled to carry on aquaculture operations immediately before the commencement of the Act. These "transitional leases" were issued as Production Leases under the *Aquaculture Act 2001*, as the terms of a Production Lease most closely mirrored entitlements of an Aquaculture Licence issued under the *Fisheries Act 1982*.

2.8 10 Legal professional privilege

these regulations seek to give certainty to the holders of those short term leases and licences granted during the transitional period by putting in place a scheme whereby those lease and licence holders can be granted valid Development Leases and corresponding licences on application, whether or not within an Aquaculture Zone. It would appear that less than fifteen leases and licences are affected.

- 2.9 Finally, the proposed regulations allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations*, which is particularly important as it relates to the use of chemicals at licence sites. 10 Legal professional privilege

3. DISCUSSION

3.1 Purpose

One of the risks involved in having operators working on site that are not the licence holder is, in the event of a food safety risk causing a particular area to be closed for harvest (under the South Australian Shellfish Quality Assurance Program – SASQAP), it is not possible to identify and directly advise all operators in the area. Likewise, traceability efforts across all aquaculture sectors would be compromised.

- 3.2 Prior to the *Aquaculture Act 2001*, these types of arrangements were dealt with by naming several people on the licence, however, this is not ideal due to the need to seek consent of all parties to the licence if any variation is required. Licence holders are obliged to meet certain standards and submit returns such as Environmental Monitoring Reports and Production Returns, however, where individuals are, for all intents and purposes, acting as separate businesses on one licence, this has proven problematic. If one party did not meet necessary standards, it would be necessary to prosecute all parties to the licence in the event of a serious breach.

- 3.3 The benefits of the division schemes described in the proposed *Aquaculture Variation Regulations 2006* would avoid the difficulties described above.

- 3.4 The proposed regulations will ensure that current operators affected by the incorrect reliance on transitional provisions will have the certainty to continue their business operations with the use of Development Leases while amendments to the *Aquaculture Act 2001* are made to further validate those actions.

- 3.5 The provision relating to conditional Ministerial approvals will allow the safe use of chemicals at aquaculture licence sites.

3.6 **Economic, financial and budgetary implications**

It is widely accepted that the majority of increase in value and production volume from the aquaculture industry will come from marine based aquaculture sectors. Therefore, in order to meet the targets set in South Australia's Strategic Plan, the South Australian Seafood Food Plan and the National Aquaculture Industry Action Agenda, the aquaculture industry will need access to suitable growing areas and certainty about the ongoing availability of these areas to facilitate forward planning and investment confidence.

The trade of aquaculture leases and licences within industry can provide significant benefit to operators and the broader community through efficient utilisation of sites.

One of the key objectives of the *Aquaculture Act 2001* is to maximise benefits to the community from the State's aquaculture resources. As such, it is in the Government's interest to avoid under utilisation of sites. The ability to divide Development and Production leases and their corresponding licences, and subsequently trade with them encourages optimum use of aquaculture sites. This, in turn, results in greater investment in infrastructure and employment in regional communities.

The ability for divisions of Development and Production leases is of most significance to accommodate the changing needs of the oyster and mussel industries, both of which have shown consistent growth in excess of 10% per annum in recent years.

The grant of valid Development Leases to those issued leases and licences as a result of applications that crossed the transitional period will allow them to proceed with their businesses including provisions for divisions and transfer, as allowed for in other parts of these variation regulations and the Act.

3.7 **Required resources**

Costs associated with divisions of Development and Production Leases would be fully cost recovered as they are of direct benefit to the parties involved in the transaction so there will not be a material budget impact for government.

3.8 **Staffing implications.**

It is anticipated that the transactions can be performed within existing staffing levels.

3.9 South Australia's Strategic Plan

The proposed *Aquaculture Variation Regulations 2006* are consistent with Objective 1 of the State Strategic Plan, "Growing Prosperity". In particular, it relates to Target 1.12, Exports which aims to treble the value of South Australia's export income to \$25 billion by 2013.

The food industry aims to contribute \$7.5 billion to this target by 2013, with the seafood industry aiming for export growth of 8.3% per annum to reach a target of \$1 billion by 2012/13, as identified in the South Australian Seafood Plan.

As noted earlier, the impacts of the proposed regulations are most significant to the oyster and mussel industries which have shown consistently high growth in past years, which also highlights further domestic and export market opportunities. Government can support this continued growth by responding to the changing needs of these growing sectors.

3.10 Impact on the community and the environment

The division of aquaculture Development and Production leases and their corresponding licences will not result in greater concentration of aquaculture activity than has already been approved on existing sites, therefore the proposal does not have any environmental impacts.

Benefits to the community of allowing divisions and naming of actual operators on leases and licences would become obvious if a food safety event were to occur, as all current operators could be identified and contacted to prevent sale of potentially dangerous foods. South Australia has been fortunate not to experience any shellfish food safety events in the past, largely due to the successful South Australian Shellfish Quality Assurance Program, however experience of other States has shown the potentially disastrous effects such events can have ranging from poisoning to death and the resulting lack of confidence in the industry.

Clarifying leasing and licensing arrangements and allowing for division of Development and Production leases and their corresponding licences will see greater investment in the aquaculture industry, greater diversity in the industry through new entrants and greater flexibility for existing operators.

3.11 Risk Management Strategy

While the proposed variation regulations allow for the grant of Development Leases to clarify arrangements for those leases previously granted during transition from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, amendments to the *Aquaculture Act 2001* will soon be proposed to further validate previous administrative actions.

3.12 **Consultation**

The Aquaculture Advisory Committee (AAC), established under the *Aquaculture Act 2001* to advise the Minister on any matters relating to aquaculture, has been consulted with respect to the proposed variation regulations and no objections were raised to the draft regulations. The AAC includes four industry representatives, local government, research and environmental members, as well as a member involved in the administration of the Environment Protection Act, a member involved in the administration of the Aquaculture Act, and an independent Chair.

In addition, the Department for Environment and Heritage and Environment Protection Authority have been briefed on the proposed variation regulations and raised no opposition or issues relating to the draft regulations.

3.13 **Implementation Plan**

The proposal can be implemented immediately upon approval, according to industry demand for divisions of Development and Production leases and their corresponding licences.

The grant of Development Leases to lease holders who applied for a licence prior to the introduction of the *Aquaculture Act 2001* will be actioned following receipt of applications from the affected parties.

3.14 **Communication Strategy**

Less than fifteen aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001* remain current, therefore it is proposed to contact the affected stakeholders by telephone and written correspondence to advise of the effect of the variation regulations.

The processes for performing divisions of aquaculture leases and licences will be made known by posting details on PIRSA's website, communications with the South Australian Aquaculture Council and articles in industry newsletters. In most instances lease and licence holders wishing to divide leases and licences contact PIRSA Aquaculture's office, at which time the provisions will be described to them, and further details contained in an information pack.

No additional resources are required to implement this communications strategy.

3.15 **Executive Council**

The proposed *Aquaculture Variation Regulations 2006* will require the approval of Her Excellency the Governor in Executive Council after Cabinet approval.

MINUTES forming ENCLOSURE to**MAFF 05/0045 CS****4. RECOMMENDATIONS**

It is recommended that Cabinet:

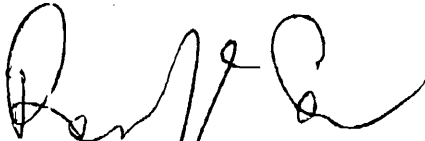
4.1 approves the drafting of *Aquaculture Variation Regulations 2006*, to:

4.1.1 allow the division of aquaculture leases and licences to accommodate commercial business practices.

4.1.2 give certainty to aquaculture leases and licences that were issued during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act 2001*, therefore providing greater investment certainty and resultant regional and social benefits.

4.1.3 allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations 2005*, as it will ensure the safe use of chemicals on aquaculture licence sites.

4.2 recommends that Her Excellency the Governor in Executive Council make the attached regulations under the *Aquaculture Act 2001*.



Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR STATE/LOCAL GOVERNMENT RELATIONS
MINISTER FOR FORESTS

Date:

4/1/06

Draft Bill

5 pages removed

Exempt clause 10(1) – legal professional privilege

TO: MEMBERS, LEGISLATIVE REVIEW COMMITTEE

RE: AQUACULTURE ACT 2001 – AMENDMENT TO REGULATIONS

PROPOSAL

The proposed *Aquaculture Variation Regulations 2006* address a number of matters which are not adequately provided for in the existing *Aquaculture Act 2001* ("the Act") and *Aquaculture Regulations 2005*. The *Aquaculture Variation Regulations 2006* will:

- provide a process to allow for the division of leases and licences;
- clarify the status of a small number of leases and licences granted pursuant to the transitional provisions of the *Aquaculture Act*; and
- allow the Minister to issue approvals under the Regulations subject to conditions.

The proposed new regulations will benefit industry by accommodating commercial practices relating to the operation, trade and transfer of aquaculture leases and licences.

BACKGROUND

Division of leases and licences

The *Aquaculture Act* allows for the transfer of aquaculture development and production leases and their corresponding licences. However, the Act does not prescribe arrangements for divisions of development and production leases and corresponding licences that would subsequently allow for parts of original leases or licences to be transferred.

The need for transfers of divisions to occur arises from industry practice where, in the case of oyster growing for example, some areas do not condition (or fatten) oysters as well as others so existing lease areas are "sub-let" in different growing areas for that purpose. However, an aquaculture licence is personal to the licence holder and cannot be sublicensed.

The proposed regulations prescribe arrangements for the substitution of an existing lease or licence with two or more leases or licences that do not otherwise vary the area, terms or conditions of the original authorisation.

Leases and licences granted pursuant to the transitional provisions

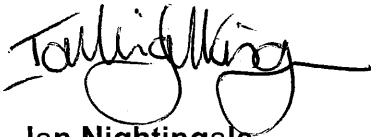
Further clarity is also sought with respect to aquaculture leases and licences granted during the transitional period from the *Fisheries Act 1982* to the *Aquaculture Act* in 2002. Transitional provisions in the *Aquaculture Act* allowed for the Minister to grant an aquaculture licence, or aquaculture lease and licence, as the case required, to any person entitled to carry on aquaculture operations immediately before the commencement of the Act. A number of production leases were granted to applicants who were at a very late stage of the application process under the *Fisheries Act* but who had not formally been given an entitlement to carry on aquaculture operations.

The new regulations seek to give certainty to the holders of those short term leases and licences granted during the transitional period by putting in place a scheme whereby those lease and licence holders can be granted valid development leases and corresponding licences on application, whether or not within an Aquaculture Zone. It would appear that a total of thirteen leases and licences are affected.

Conditional authorisations

The proposed regulations allow for the Minister to attach conditions to any authorisations issued under the *Aquaculture Regulations*, which is particularly important as it relates to the use of chemicals at licence sites. It is desirable for the ability of the Minister to attach conditions to approvals to be specifically included in the Regulations.

Parliamentary Counsel has prepared the Regulations and has issued a Certificate of Validity.



Ian Nightingale

EXECUTIVE DIRECTOR, AQUACULTURE DIVISION
PRIMARY INDUSTRIES AND RESOURCES SA

Date: 5/1/2005

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