



Guidelines for marine aquaculture leases

The word 'lease' is widely used in the aquaculture industry. In this fact sheet 'lease' has a specific meaning; it is a legal interest granted to a fish farmer permitting exclusive occupation of the farm site for forty years. A lease is separate to a fish farming licence. While the fish farming licence manages the farm activities, the lease provides tenure of a public resource.

A fish farming licence is issued pursuant to s53 of the Fisheries Act 1982 and provides an annual right to occupy the site for the purpose of fish farming.

Is a lease necessary?

A lease is not essential to operate a fish farm. However, farmers must hold a fish farming licence issued by the Director of Fisheries. The licence provides for occupation of the site for fish farming and the taking of farmed fish from the waters. Fish farming licences are only considered for sites that have been granted development approval by the Development Assessment Commission.

The Minister for Transport and Urban Planning has delegated power to issue leases over the seabed (pursuant to s19 Harbors and Navigation Act 1993) to the: Minister for Primary Industries, Natural Resources and Regional Development, also to the Chief Executive Officer of the Department for Primary Industries and Natural Resources and to the General Manager, Aquaculture SA, PIRSA

Some benefits and features of a lease

- 40 years tenure,
- opportunity to extend the lease term,
- a right of exclusive occupation of the site,
- registration of a lease interest on a Certificate of Title,
- ability to assign the lease to another, sublet, mortgage, transfer and undertake other business transactions,
- collection of fees for a public resource,
- ensuring insurance cover for the public,
- securing funds to rehabilitate a degraded or abandoned site,
- ensuring consistent lease conditions apply to fish farms, and
- inclusion of lease conditions that protect the environment.

Eligible sites

A number of consents must be in place before a lease application can be considered:

- the site must have development approval under the *Development Act 1993* for commercial fish farming,
- the seabed must be controlled by the Minister for Transport and Urban Planning,
- the applicant must hold a renewable fish farming licence for the site.

The Minister for Primary Industries, Natural Resources and Regional Development has delegated power to issue fish farming licences (pursuant to s53 Fisheries Act 1982) to the General Manager, Aquaculture SA, PIRSA.

Ineligible sites

An application for a lease cannot be made where:

- further development approval is required for continued activities,
- further approval from the Director of Fisheries is required for continued activities and, or
- the Minister for Minister for Primary Industries, Natural Resources and Regional Development does not have authority to issue leases over the seabed.

Information required on application

The application form will advise the details of information that must be provided. This will include:

- a copy of the Decision Notification Form for valid development approval for the site,
- a certified survey plan (Deposit Plan) of the site, capable of being deposited in the Lands Titles Office and prepared by a licensed land surveyor,
- proof of public liability insurance (see below),
- provision of site rehabilitation indemnification (see below), and
- lease preparation fees (advised and determined at time of application).

Annual lease fees

Lease fees are payable each financial year. The fees are due and payable in advance when the lease is first issued and afterwards by 30th June each year. The fees for the first year are adjusted, according to the date when the lease is first issued. Lease fees are reviewed annually. The fees are indexed to the Consumer Price Index but will not rise by more than 5% in any given lease year.

The annual fees for the 1999/2000 financial year are:

Size of site (hectares)	Annual Fee Including GST
0 to 10ha	\$346.50
>10ha to 20ha	\$462.00
>20ha to 50ha	\$577.50
>50ha	\$693.00

Public liability insurance

Every lessee must hold, and keep current, public liability insurance to the value of \$5M. The insurance must be held in the joint names of the lessee and the lessor and note the interest of the Minister for Transport and Urban Planning.

Site rehabilitation

It is a condition of every lease that the lessee indemnifies the Minister against the lessee's failure to meet his or her site rehabilitation obligations. Site rehabilitation involves the clean up and removal of any structures on expiration or termination of the lease.

There are several ways for lessees to provide indemnification. The lessee may contribute to an approved industry fund or the Minister's fund or arrange a bank guarantee. Further information will be provided on application.

Lease termination

A lease can be terminated if:

- rent is not paid in accordance with the lease conditions,
- the development approval for the site lapses,
- activity on the leased site causes degradation of the coastal or marine environment unacceptable to the Minister, or
- the lessee is in breach of any condition of the lease.

Moving a lease

A lease is a proprietary interest over a site and can be registered on a Certificate of Title. That interest cannot be transferred to a different site. Relocation of an interest requires all the approvals for a new development. This existing fish farming licence and lease are cancelled, and the grant of a new licence and a new lease for the new site. The same approval process applies to any amendment to the size, shape or development of an existing site.

Making application

Applicants may apply by letter to:

The General Manager
Aquaculture SA - PIRSA,
GPO Box 1625
ADELAIDE SA 5001

Or call:

The Aquaculture Leasing Officer on 08 8226 0314.

The relevant information and application forms will be forwarded to you.

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