



**PRIMARY INDUSTRIES
AND RESOURCES SA**

AQUACULTURE TENURE ALLOCATION POLICY

Prepared by

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AQUACULTURE TENURE ALLOCATION

POLICY

PROPOSAL

To establish an aquaculture tenure allocation framework that will ensure a fair and efficient means of allocating the State's marine resources, whilst achieving ecologically sustainable development and maximising community benefits.

BACKGROUND

PIRSA Aquaculture has a statutory and regulatory responsibility for the management of aquaculture practised in South Australia and will do so through the granting and renewal of essential licenses, leases and permits pursuant to the *Aquaculture Act 2001*.

The *Aquaculture Act 2001* came into operation on the 1st July 2002, and its objectives are:

- to promote the ecologically sustainable development of marine and land based aquaculture;
- to maximise the benefits to the community from the State's aquaculture resources; and
- to ensure the efficient and effective regulation of the aquaculture industry.

The Act provides a flexible approach to the granting of rights to occupy State waters and provides security for aquaculture operators while protecting the interests of the community. Under the Act, a licence may not be granted for aquaculture in State waters unless the area is subject to a lease granted by the Minister. The Act allows for four types of lease, namely pilot, development, production and emergency leases.

Aquaculture leases will provide security of tenure, whilst licences will accommodate flexible regulatory and adaptive management practices. The competitive tenure allocation process will ensure a fair and efficient means of allocating and utilising the State's marine resources.

The leasing system and underlying policy framework introduced to support the Aquaculture Act will have a significant role in ensuring the sustainable development of the aquaculture industry. This system provides a flexible, accountable and transparent approach to granting occupation rights to undertake aquaculture in State waters.

In order to deliver effective outcomes for industry, community and the environment a strategic approach to ecologically sustainable development is required. This will be underpinned by a clear policy framework for the allocation of resources, effective implementation and management through aquaculture leases and ongoing adaptation through performance measures.

DISCUSSION

Aquaculture Tenure Allocation Board (ATAB)

Terms of Reference

Terms of reference have been developed for the Aquaculture Tenure Allocation Board based on the prescribed functions identified by the Act and the inter-relationships required for effective management of the aquaculture industry. The Terms of Reference will allow for the ATAB to perform any functions assigned to it by the Minister.

The Aquaculture Tenure Allocation Policy will prescribe the following Terms of Reference for operation of the Aquaculture Tenure Allocation Board.

1. The ATAB will undertake the assessment of all new marine lease applications referred to it by PIRSA Aquaculture, and recommend outcomes and actions to the Minister.
2. The ATAB will undertake assessment of previously approved lease sites for the purposes of review and conversion.
3. The ATAB will recommend to the Minister appropriate action, including but not limited to the cancellation or amendment of leases where a lease holder has failed to meet agreed lease performance criteria after seeking representation from the leaseholder. The leaseholder will be invited to show cause why action should not be taken.
4. The ATAB will ensure that its recommendations comply with the government's policies on aquaculture development and the availability of corresponding aquaculture licenses.
5. The ATAB will advise the AAC of recommended policy amendments in relation to tenure issues.
6. Recommendations of the ATAB shall be based on appropriate risk assessment, with due consideration to economic factors and ecological sustainable development (ESD) as described in Section 4 of the Aquaculture Act 2001.
7. The ATAB will operate in a manner that reflects the requirements of the Act in terms of function, membership, terms and conditions, disclosure of interest, consultation and procedures.

Performance Criteria

The success of the tenure allocation process relies on an efficient and effective assessment process, in which the ATAB can make and report recommendations to the Minister decisions within appropriate time parameters.

The Aquaculture Tenure Allocation Policy will prescribe the following Performance Criteria for operation of the Aquaculture Tenure Allocation Board.

8. The ATAB must make its response to the Minister within six weeks (which will be extended by any period that the applicant or other party takes to provide information requested by the ATAB).

9. Recommendations to the Minister shall be clear, concise and defensible and will include the justification for specific recommendations.
10. The Minister, in consultation with the ATAB, may modify any lease performance criteria applied by the ATAB.

Assessment of Applications

Under the *Aquaculture Act 2001*, the availability of lease sites for aquaculture purposes will be made known through a public call for applications. It is the role of the ATAB to coordinate the call and make recommendations to the Minister on the applications received. Additionally, there is a need to determine and publish the criteria by which aquaculture lease applications are to be assessed, evaluated and reviewed.

The key objective of the tenure allocation process under the Aquaculture Act is to allocate tenure to operators who will use the marine resource at an optimum level (in terms of quality and quantity of output relative to the capacity of the environment). The Aquaculture Act constrains the way in which certain forms of aquaculture tenure are allocated, and specific allocation methods are discussed in the Aquaculture Resource Management and Ecologically Sustainable Development Policy.

Pilot leases can only be granted in areas outside of an aquaculture zone. There may be little information available upon which an objective bid and assessment could be based.

11. Applicants for Pilot leases shall include within their application:

- A complete analysis of the proposed venture including a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) with emphasis upon environmental and commercial exposures.
- Sufficient financial analysis to test the commercial validity involved.
- Identification of areas where compliance with data and restrictions cannot be achieved.

The Aquaculture Tenure Allocation Policy will apply the following criteria and processes to the assessment of applications for aquaculture tenure.

12. The ATAB will assess aquaculture lease applications against the following criteria:

- Relevance to Zone policies where applicable;
- Nature of the proposal;
- Economic benefit to the State;
- Technical capacity;
- Business capacity;
- Environmental management capacity;
- Regional and social benefits;
- Other relevant criteria published by the Minister.

13. Additional criteria specific to a zone or site may be included in the advertisement and request for tender documentation.

14. Guidelines for addressing all criteria will be contained in the request for tender documentation (in the case of an advertised site), in materials available from PIRSA Aquaculture, or by contacting PIRSA Aquaculture's Regulatory Services Unit.

15. Proponents will be required to lodge a full and detailed business plan as part of the assessment process.
16. The ATAB may accept a request for a proponent to make representation in support of their application. Likewise, the ATAB may seek independent advice in the interests of reaching well informed decisions regarding the merits of proposals before them.
17. The ATAB will only assess lease applications where corresponding licences will be issued by the Minister.
18. The ATAB shall only consider the allocation of a lease for aquaculture purposes where the applicant is able to lodge a bank guarantee or demonstrate participation in an approved indemnity scheme to allow for site restoration.
19. The ATAB will not require information of an Intellectual Property (IP) nature to be disclosed.
20. Criteria for the assessment process may be varied at the discretion of the Minister.
21. As a general principle, the ATAB will apply the State Supply Board (SSB) policies and methodologies for public calls and competitive assessment of aquaculture tenure applications.
22. A public call for registration of interest followed by a selective tender and direct negotiation is within the meaning of "Public Call" as provided for by the *Aquaculture Act 2001*.

Lease Performance

Given that a lease utilises a valuable public asset, the public has the right to be assured the maximum community value has been extracted by the private entity taking a commercial risk with those assets. In the same way that other forms of leases are assessed for their continuing compliance with the terms and conditions of the lease, PIRSA Aquaculture and the ATAB have a responsibility for assessing and evaluating continuing compliance with lease conditions and performance standards.

The Aquaculture Tenure Allocation Policy will apply the following criteria and processes to the assessment of lease performance for the purpose of review or conversion. In reviewing these criteria, the ATAB shall undertake consultation with the existing operator.

23. The minimum level of performance for a lease will be 70% of the predetermined and agreed levels of development and agreed timeframes set out in the lease. If development falls below this level it may result in the ATAB recommending review of the lease.
24. The ATAB may review actual performance against those criteria nominated in the business plan, and where the performance does not reasonably meet forecasts in the business plan then the lease may be reviewed.

25. PIRSA Aquaculture or their agents may, having made reasonable endeavours to contact the leaseholder prior, undertake site assessment for the purposes of assessing performance of a lease at their discretion, and report to the ATAB findings of site inspections.
26. Where there is a significant difference between the current status of development and what was submitted in the initial business plan, the ATAB may require the proponent to present a revised business plan. Where a revised business plan is not produced and performance continues to fail to meet that of the original business plan, then the ATAB may review the lease.
27. The ATAB shall recognise development approval requirements for the purposes of performance assessment.
28. Where environmental monitoring reports indicate significant environmental impacts, the ATAB will review the lease in consultation with the leaseholder.
29. Lease documents shall identify termination/suspension clauses.
30. The ATAB may make recommendation to the Minister to terminate any aquaculture lease for reasons identified in termination/suspension clauses.