

South Australia

# **Aquaculture (Standard Lease and Licence Conditions) Policy 2019**

under the *Aquaculture Act 2001*

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Standard conditions of aquaculture lease
- 4 Standard conditions of aquaculture licence

### **Part 2—Standard Lease Conditions**

- 5 Interpretation
- 6 Term of lease
- 7 Renewal of lease
- 8 Lease fee
- 9 GST
- 10 Default costs and interest
- 11 Performance requirement
- 12 Cancellation of lease by Minister
- 13 Access to leased area
- 14 Notification to Minister of damage, degradation and risks arising due to aquaculture activity
- 15 Notice to Minister
- 16 Disclaimer
- 17 Exclusion of liability
- 18 Dealing with lease
- 19 Waiver
- 20 No nuisance
- 21 Consents and approvals
- 22 Indemnity
- 23 Guarantee or approved scheme
- 24 Public liability insurance
- 25 Navigational marks
- 26 Marking-off requirements
- 27 Rehabilitation of leased area
- 28 Wild caught southern bluefin tuna—use of leased area
- 29 Wild caught southern bluefin tuna—access to southern bluefin tuna
- 30 Survival of conditions

### **Part 3—Standard licence conditions**

#### **Division 1—Provisions applying in respect of all aquaculture licences**

- 31 Interpretation

---

32	Notice to Minister
Division 2—Provisions applying to marine-based aquaculture licences	
33	Preliminary
34	Escape and interaction prevention
35	Notification to Minister of damage, degradation and risks arising due to aquaculture activity
36	Degradation or damage to the seabed, marine or coastal environment
37	Maximum biomass—finfish (other than wild caught southern bluefin tuna)
38	Maximum biomass—wild caught southern bluefin tuna
39	Maximum biomass—mussel
40	Maximum biomass—oyster
41	Oyster farming—securing baskets
42	Mollusc farming—farming structures
43	Signage
Division 3—Provisions applying to land-based aquaculture licences	
44	Preliminary
45	Land-based category A licence—discharge of wastewater
46	Escape prevention and reporting

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## Part 1—Preliminary

### 1—Short title

This policy may be cited as the *Aquaculture (Standard Lease and Licence Conditions) Policy 2019*.

### 2—Commencement

The commencement date of this policy is .

### 3—Standard conditions of aquaculture lease

- (1) Subject to subclause (2), the provisions in Part 2 of this policy constitute conditions of an aquaculture lease and, accordingly, are to be read as forming part of the lease.
- (2) A provision of Part 2 may vary in its operation according to the zones or other areas, or the classes of aquaculture, or other circumstances, to which it is expressed to apply.
- (3) In the event of an inconsistency between the provisions of this policy and any other conditions of a lease, the provisions of this policy will prevail to the extent of the inconsistency.

### 4—Standard conditions of aquaculture licence

- (1) Subject to subclause (2), the provisions in Part 3 of this policy constitute conditions of an aquaculture licence and, accordingly, are to be read as forming part of the licence.
- (2) A provision of Part 3 may vary in its operation according to the zones or other areas, or the classes of aquaculture or licence, or other circumstances, to which it is expressed to apply.

- (3) In the event of an inconsistency between the provisions of this policy and any other conditions of a licence, the provisions of this policy will prevail to the extent of the inconsistency.

## Part 2—Standard Lease Conditions

### 5—Interpretation

- (1) In this Part and in the lease, unless the contrary intention appears:

*Act* means the *Aquaculture Act 2001*;

*annual lease fee* means the annual lease fee payable under clause 8;

*business day* means a day other than a Saturday or a Sunday or other public holiday;

*GST* means the tax payable under the GST law;

*GST law* means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth; and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

*leased area*, in respect of the lease, means the area subject to the lease;

*Minister* means the Minister to whom administration of the Act is committed;

*person* includes a body corporate;

*Regulations* means the *Aquaculture Regulations 2016*;

*term of the lease* means the term of the lease under clause 6.

- (2) Unless the contrary intention appears, terms used in the lease that are defined in the Act, the Regulations or an aquaculture policy have the respective meanings assigned to those terms by the Act, the Regulations or other policy (as the case requires).
- (3) Every word in the singular number will be construed as including the plural number, every word in the plural number will be construed as including the singular number and every word implying a particular gender will be construed as including every other gender.
- (4) Where two or more persons are included in the designation *the lessee* the obligations on the part of the lessee contained in the lease will bind such persons and any two or greater number of them jointly and each of them severally and the expression *the lessee* will include all or any one or more of such persons.
- (5) References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- (6) Headings are for convenience of reference only and shall not affect the construction or interpretation of the lease.
- (7) Each word, phrase, sentence, paragraph and clause of the lease is severable. If a court determines that a part of the lease is unenforceable, invalid or void that court may sever that part. Severance of a part of the lease will not affect any other part of the lease.

- (8) Where a word, phrase, sentence, paragraph, clause or other provision of the lease would otherwise be unenforceable, invalid or void, the effect of that provision shall so far as possible be limited and read down so that it is not unenforceable, invalid or void.

## 6—Term of lease

The term of the lease is as specified in a schedule to the lease.

## 7—Renewal of lease

- (1) An application to renew the lease must be received by the Minister at least 90 days before the expiry of the term of the lease.
- (2) The Minister may, on application to renew the lease—
- (a) renew the lease subject to the terms and conditions the Minister considers appropriate (which may vary from the terms and conditions of the original lease); or
  - (b) decline to renew the lease.
- (3) Without limiting the matters to which the Minister may have regard in deciding whether or not to renew the lease and the conditions that may apply in respect of a renewed lease, the Minister may have regard to—
- (a) whether the lessee is in breach of, or has previously breached, a condition of the lease;
  - (b) the extent to which the lessee has complied with the obligations, conditions and standards of compliance imposed on a lessee under the Act, the Regulations and an aquaculture policy applying in respect of the lease;
  - (c) whether a corresponding licence holder is in breach of, or has previously breached, a condition of a corresponding licence;
  - (d) the extent to which a corresponding licence holder has complied with the obligations, conditions and standards of compliance imposed on a licensee under the Act, the Regulations and an aquaculture policy applying in respect of the licence;
  - (e) whether a corresponding licence holder has contravened a notice issued under section 33 of the *Livestock Act 1997*.

## 8—Lease fee

- (1) The annual lease fee, as specified in a schedule to the lease, is payable in respect of each financial year, or part of a financial year, in which the lease applies.
- (2) The Minister may vary the annual lease fee by written notice to the lessee.
- (3) If the lease is granted part of the way through a financial year, the fee for that financial year will be calculated on a pro-rata basis from when the lease is granted.
- (4) The lessee must pay the annual lease fee and the GST payment (see clause 9) within the time specified by the Minister by written notice to the lessee (which must be not less than 10 business days after receipt of the notice).

- (5) The Minister may enter into an arrangement with the lessee for payment of the annual lease fee (other than the annual lease fee applying in the first year of the lease) by instalments.
- (6) If the lessee fails to pay the annual lease fee or an instalment of the annual lease fee by the date specified by the Minister, the Minister may, by written notice, require the lessee to make good the default.

**9—GST**

- (1) The annual lease fee payable under the lease is exclusive of GST.
- (2) The lease is a taxable supply under GST Law.
- (3) The Department of Primary Industries and Regions, ABN No. 53 763 159 658, is the government entity administering each aquaculture lease on behalf of the Minister and is registered pursuant to the GST Law.
- (4) The Department of Primary Industries and Regions is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to each aquaculture lease instead of the Minister for the purposes only of the GST Law.
- (5) The lessee must, together with any payment of the annual lease fee, pay an additional amount in respect of GST (the *GST payment*). The GST payment is 10 per cent of the annual lease fee, subject only to any change in the rate of GST under GST Law.
- (6) The Minister may amend this clause by Gazette notice.

**10—Default costs and interest**

- (1) The Minister may, by written notice to the lessee, require the lessee to pay to the Minister the reasonable costs incurred by the Minister in respect of a breach of the lease by the lessee including (without limitation) costs incurred by the Minister—
  - (a) in taking action under clause 8(6) in respect of a failure to pay the annual lease fee or an instalment of the annual lease fee by the date specified by the Minister; and
  - (b) in remedying a failure to rehabilitate the leased area under clause 27.
- (2) If an amount required to be paid under the lease, including an amount required to be paid under subclause (1), remains unpaid for any period of time, the Minister may, by written notice, require the lessee to pay to the Minister an amount of interest on the unpaid amount calculated at the official cash rate on a daily basis from the end of the last day for payment until the day it is paid.
- (3) In this clause—

*official cash rate* means the cash rate fixed by the Reserve Bank of Australia and prevailing on the date of calculation of an amount of interest.

**11—Performance requirement**

- (1) The lessee must ensure that the leased area is—
  - (a) used in accordance with the performance criteria specified in a schedule to the lease; and
  - (b) used for the class of aquaculture, and to the extent, specified in a schedule to the lease.

- (2) If the Minister considers on reasonable grounds that the lessee is at any time not complying with subclause (1), the Minister may—
- (a) by notice in writing direct the lessee to take certain action in a specified time for the purposes of ensuring such compliance; and
  - (b) vary the lease as the Minister considers appropriate in the circumstances of the case including, without limitation—
    - (i) by reducing the term of the lease; and
    - (ii) by reducing the size of the leased area.

## 12—Cancellation of lease by Minister

- (1) The Minister may cancel the lease by written notice to the lessee, to take effect immediately or at a date to be nominated by the Minister, in the following circumstances:
- (a) if the lessee enters into any form of insolvency administration;
  - (b) if the lessee is in breach of a condition of the lease and continues to be in breach for such period as specified by the Minister from the date a notice is served on the lessee by the Minister requiring the lessee to remedy such breach;
  - (c) if the lessee (being a natural person) or a director of the lessee (being a corporation) is convicted of any indictable offence;
  - (d) if there is a breach of any provision of the Act or Regulations by the lessee or a corresponding licence holder;
  - (e) if there is a breach of a corresponding licence by a corresponding licence holder;
  - (f) if a corresponding licence is cancelled or otherwise terminated;
  - (g) if a corresponding licence holder has contravened a notice issued under section 33 of the *Livestock Act 1997*.
- (2) For the purposes of this clause, a lessee ***enters into a form of insolvency administration*** if any of the following circumstances apply to the lessee:
- (a) in the case of a lessee that is a body corporate—
    - (i) an administrator is appointed to the lessee or action is taken to make such an appointment;
    - (ii) the lessee resolves to be wound up;
    - (iii) an application is made to a court for an order, or an order is made by a court, that the lessee be wound up (whether on the grounds of insolvency or otherwise);
    - (iv) the lessee ceases to carry on business;
    - (v) a receiver or a receiver and manager of property of the lessee is appointed (whether by a court or otherwise);
    - (vi) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee;

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- (vii) a liquidator or provisional liquidator is appointed in respect of the lessee (whether by court order or otherwise);
  - (viii) the lessee enters into a compromise or arrangement with its creditors or a class of them;
  - (ix) the lessee is, or states that it is, unable to pay its debts as and when they fall due;
- (b) in the case of a lessee that is a natural person—
- (i) the lessee has committed an act of bankruptcy as contemplated by the *Bankruptcy Act 1966* of the Commonwealth;
  - (ii) the lessee is unable to pay their debts as and when they fall due;
  - (iii) a court has made a sequestration order against the lessee's estate;
  - (iv) a creditors' petition has been presented against the lessee;
  - (v) the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
  - (vi) the lessee becomes bankrupt;
  - (vii) a meeting of the creditors of the lessee is convened;
  - (viii) the lessee lodges with their trustee a proposal to the lessee's creditors for a composition in satisfaction of the lessee's debts or a scheme of arrangement of the lessee's affairs.

### **13—Access to leased area**

- (1) The Minister or an officer, employee or agent of the Minister may, without giving any notice, enter and remain on the leased area (including any marked-off area) for the purposes of—
- (a) inspecting the leased area; and
  - (b) monitoring compliance with, and enforcing, the Act, the Regulations and the lease by the lessee; and
  - (c) monitoring compliance with, and enforcing, the Act, the Regulations and a corresponding licence by a corresponding licence holder; and
  - (d) remedying a breach of the Act, the Regulations, the lease or a corresponding licence (although the Minister will be under no obligation to remedy any such breach).
- (2) The Minister and the Minister to whom the *Harbors and Navigation Act 1993* is committed and the officers, employees and agents of each of those Ministers may, without giving any notice, enter upon and remain on the leased area (including any marked-off area) for the purpose of inspecting all adjacent and subjacent land, all wharves, docks, jetties and other structures, and navigational aids as those terms are referred to in section 15 of the *Harbors and Navigation Act 1993*.

- (3) In exercising any of their rights under and pursuant to this clause the Minister, the Minister to whom the *Harbors and Navigation Act 1993* is committed and the officers, employees and agents of each of those Ministers must use reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a corresponding licensee's use of the leased area.
- (4) The powers of an authorised person under section 46 of the Act do not apply in respect of a person exercising a right under this clause in relation to a marked-off area.

#### **14—Notification to Minister of damage, degradation and risks arising due to aquaculture activity**

The lessee must, on becoming aware of any of the following matters (whether in the leased area or outside it) occurring, or being likely to occur, due to aquaculture activity undertaken in the leased area, immediately notify the Minister by telephone and also within 2 days by notice in writing:

- (a) damage or degradation to the seabed or the marine or coastal environment;
- (b) a material risk to navigational safety.

#### **15—Notice to Minister**

- (1) If the lessee is required to give notice in writing or provide or produce any other documents, records or information to the Minister, such notice, record, document or information may be sent—
  - (a) by post to PIRSA Fisheries and Aquaculture, GPO Box 1625, Adelaide SA 5001; or
  - (b) by email to PIRSA.Aquaculture@sa.gov.au; or
  - (c) by facsimile transmission to (08) 8204 1388; or
  - (d) to such other postal or email address or facsimile number as notified by the Minister to the lessee in writing.
- (2) If the lessee is required to notify the Minister of a matter by telephone—
  - (a) in the case of a notification under clause 14—the lessee must notify the Minister by calling 1800 065 522 or such other number as notified by the Minister to the lessee in writing;
  - (b) in any other case—the lessee must notify the Minister by telephone call to (08) 8226 0900, or such other number as notified by the Minister to the lessee in writing.
- (3) Notice given or sent to, or served on, one of the natural persons or bodies corporate comprising the lessee will be taken to be notice to all persons comprising the lessee.
- (4) The Minister may amend this clause by Gazette notice.

#### **16—Disclaimer**

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly excluded.

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**17—Exclusion of liability**

The Minister and its employees, agents, contractors and invitees will have no responsibility or liability to the lessee for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent, contractor or invitee of the Minister.

**18—Dealing with lease**

- (1) Subject to subclause (2), the lessee is not permitted to grant a sub-lease under the lease.
- (2) A sub-lease may be granted in respect of a production lease with the prior written consent of the Minister and such consent may be subject to conditions as determined by the Minister.

**19—Waiver**

- (1) If the Minister waives a breach of any covenant, obligation or provision in the lease, that waiver does not operate as a waiver of another breach of the same, or of any other, obligation or provision in the lease.
- (2) The consent by the Minister to the surrender of the lease does not constitute a waiver of a breach of any obligation or provision in the lease.

**20—No nuisance**

The lessee must not do or permit to be done in or about the leased area anything which may cause, or be likely to cause, a nuisance or annoyance to or in any way interfere with the quiet and comfort of any users of land or waters near or around the leased area.

**21—Consents and approvals**

- (1) If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court, the lessee must obtain such consent or approval at its own expense and the lessee must at no time during the term of the lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval may lapse or be revoked.
- (2) During the term of the lease, the lessee must keep current all consents and approvals required under the *Development Act 1993*, the *Planning, Development and Infrastructure Act 2016* and any other law applicable to the leased area, the class of aquaculture authorised under the lease and the lessee's use of the leased area.
- (3) The lessee must, on request of the Minister, provide the Minister with specified documents relating to a consent or approval referred to in this clause.

**22—Indemnity**

The lessee must indemnify and save harmless the Crown in right of the State of South Australia against—

- (a) all actions, claims, demands, proceedings, judgements, orders, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of:

- (i) the use or occupation of the leased area by the lessee or a corresponding licence holder or any employee, agent, contractor or invitee of the lessee or a corresponding licence holder or any person under the control of the lessee or a corresponding licence holder;
  - (ii) any occurrence on the leased area;
  - (iii) any act, omission, neglect or default of the lessee or a corresponding licence holder, or any employee, agent, contractor or invitee of the lessee or a corresponding licence holder or any person under the control of the lessee or a corresponding licence holder;
  - (iv) any breach of obligations under the lease; and
- (b) all loss or damage to the leased area, and any property on it caused by the lessee or a corresponding licence holder or by any employee, agent, contractor, or invitee of the lessee or a corresponding licence holder or other person having business with the lessee or a corresponding licence holder and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and
  - (c) all fees costs liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to the lease, except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee agent or contractor of the Minister; and
  - (d) all actions, claims, demands, proceedings, judgements, orders, costs, damages, expenses and losses arising from any failure to comply with the laws in force in South Australia.

### 23—Guarantee or approved scheme

- (1) The lessee must within 5 business days of receipt of the lease but with effect from the date of commencement of the term of the lease at the lessee's option either:
  - (a) provide a guarantee from its bankers in the amount specified in a schedule to the lease, or if no amount is specified, in the amount of \$10 000; or
  - (b) contribute to a scheme established or approved by the Minister for the aquaculture industry to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of the lease and, in particular, the obligations of the lessee to rehabilitate the leased area under clause 27; or
  - (c) take any other action approved by the Minister for the purpose of ensuring the security of the due and punctual performance by the lessee of the terms and conditions of the lease and, in particular, the obligations of the lessee to rehabilitate the leased area under clause 27.
- (2) If the lessee provides a bank guarantee the following provisions apply:
  - (a) the lessee must arrange for the provision from an authorised deposit taking institution within the meaning of the *Banking Act 1959* of the Commonwealth of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the **Bank Guarantee**) which must—

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- (i) contain terms and conditions reasonably satisfactory to the Minister; and
  - (ii) be maintained continuously until the Minister agrees to release it under this clause; and
  - (iii) entitle the Minister to call on the Bank Guarantee at any time if the lessee fails to pay any money at the time specified or fails fully and punctually to perform any of its obligations under the lease, in particular, the obligations of the lessee to rehabilitate the leased area under clause 27;
- (b) if the Minister makes a call on the Bank Guarantee and appropriates any funds, then within 5 days of that call the lessee must provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so called and paid by the bank to the Minister and on the same terms and conditions as specified in this clause;
  - (c) the lessee will not be entitled to request or obtain a release or a re-delivery of the Bank Guarantee until 1 month after the expiration of the term of the lease;
  - (d) notwithstanding any other provisions of this clause the Minister may refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee.
- (3) If the lessee does not provide a Bank Guarantee or take any other action approved by the Minister under subclause (1)(c), the lessee must make such contributions to the scheme established or approved by the Minister for the aquaculture industry as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme.
  - (4) The provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default.
  - (5) Notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in the lease, then on and as and from the date that the transferee or assignee complies with subclause (1), the Minister must fully free, release and discharge the lessee from any and all obligations under and pursuant to this clause and must release and redeliver to the lessee any bank guarantee.
  - (6) If the lessee has already provided a guarantee, contributed to a scheme or taken other action approved by the Minister in accordance with obligations under previous arrangements to the extent required under the lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.
  - (7) The lessee must, on request by the Minister, demonstrate to the Minister's satisfaction that the amount of the Bank Guarantee, scheme or other security under subclause (1) is sufficient for the purposes of this clause, in particular the rehabilitation of the leased area under clause 27.

- (8) The Minister may vary the amount of the Bank Guarantee required under the lease during the term of the lease in accordance with the following:
- (a) the Minister must give the lessee written notice of intention to adjust the Bank Guarantee required (a *notice of intent*);
  - (b) the notice of intent may specify the amount of adjustment proposed;
  - (c) the Minister must give the lessee written notice of the adjusted bank guarantee requirement (an *adjustment notice*), specifying the date from which the adjusted bank guarantee requirement is effective (the *effective date*);
  - (d) the effective date must be no earlier than the date of the notice of intent.
- (9) The lessee must comply with any variation as required by the Minister in accordance with this clause.
- (10) Where there is a bank guarantee in place under the lease (the *earlier bank guarantee*) and the Minister receives another bank guarantee required by the Minister in accordance with this clause, the Minister must discharge the earlier bank guarantee.

## 24—Public liability insurance

- (1) During the term of the lease the lessee must either:
- (a) maintain public liability insurance in the joint names of the lessee and the Minister for their respective rights and interests; or
  - (b) note the leased area and the Minister's rights and interests in the leased area and under the lease on public liability insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia.
- (2) The lessee must ensure that the insurance referred to in subclause (1)—
- (a) is with an insurer satisfactory to the Minister; and
  - (b) is for not less than the amount specified in a schedule to the lease for any 1 event or such other amount as the Minister may reasonably require; and
  - (c) requires that the insurer notify the Minister of any proposed variations to or enforcement of the terms of the insurance; and
  - (d) has sufficient scope of coverage to indemnify the lessee and the Minister against any loss of any kind including loss arising out of or in connection with—
    - (i) the use of the leased area by the lessee or a licensee under a corresponding licence or the servants, agents and invitees of either; and
    - (ii) any death, illness or bodily injury sustained by any person on the leased area or any damage to property occurring on the leased area.
- (3) The lessee must produce a copy of the relevant insurance policy referred to in subclause (1) and a copy of a certificate of currency in respect of that insurance policy—
- (a) within 14 days of the commencement of the term of a lease; and
  - (b) at any other time on request of the Minister.

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- (4) The Minister may vary the amount of public liability insurance specified under subclause (1) during the term of the lease in accordance with the following:
    - (a) the Minister must give the lessee written notice of intention to adjust the amount of public liability insurance required (a *notice of intent*);
    - (b) the notice of intent may specify the amount of adjustment proposed;
    - (c) the Minister must give the lessee written notice of the adjusted public liability insurance requirement (an *adjustment notice*), specifying the date from which the adjusted public liability insurance requirement is effective (the *effective date*);
    - (d) the effective date must be no earlier than the date of the notice of intent.
  - (5) The lessee must comply with any variation as required by the Minister in accordance with this clause.
  - (6) The public liability insurance requirement in respect of any renewed term of the lease will be as notified by the Minister before the expiry of the initial term of the lease.

## **25—Navigational marks**

- (1) The lessee must, before any structures are placed in the leased area, install navigation marks in accordance with this clause.
- (2) If a schedule to the lease specifies the required manner of installation of navigational marks, navigational marks must be installed as specified in the schedule.
- (3) If the lease specifies that intertidal navigational marks apply to the lease but does not specify the manner of installation, navigational marks must be installed as follows:
  - (a) if the leased area does not form part of a combined lease shape with another leased area—
    - (i) intertidal navigational marks must be installed on the outermost corners of the leased area; and
    - (ii) additional intertidal navigational marks must be installed at equal spacing along the outer boundaries of the leased area such that the distance between any 2 marks does not exceed 500 m; and
    - (iii) if specified in a schedule to the lease, a flashing light as specified;
  - (b) if the leased area forms part of a combined lease shape with 1 or more other adjacent leased areas—
    - (i) intertidal navigational marks must be installed on each corner of the leased area that is an outermost corner of the combined lease shape; and
    - (ii) additional intertidal navigational marks must be installed at equal spacing along the outer boundary of the leased area forming part of the combined lease shape such that the distance between any 2 marks on the combined lease shape does not exceed 500 m; and
    - (iii) if specified in a schedule to the lease, a flashing light as specified.

- (4) If the lease specifies that subtidal navigational marks apply to the lease but does not specify the manner of installation, navigational marks must be installed as follows:
- (a) if the leased area does not form part of a combined lease shape with another leased area—
    - (i) subtidal navigational marks must be installed on the outermost corners of the leased area; and
    - (ii) additional subtidal navigational marks must be installed at equal spacing along the outer boundaries of the leased area such that the distance between any 2 marks does not exceed 500 m;
  - (b) if the leased area forms part of a combined lease shape with 1 or more other adjacent leased areas—
    - (i) subtidal navigational marks must be installed on each corner of the leased area that is an outermost corner of the combined lease shape; and
    - (ii) additional subtidal navigational marks must be installed at equal spacing along the outer boundary of the leased area forming part of the combined lease shape such that the distance between any 2 marks on the combined lease shape does not exceed 500 m.
- (5) If the leased area forms part of a combined lease shape with 1 or more adjacent leased areas, the Minister may, by notice in writing to the lessee, require the installation of an intertidal navigational mark or subtidal navigational mark (as the case requires) at a specified point on the outer boundary of the leased area forming part of the combined lease shape.
- (6) If subclause (2) applies, the Minister may vary the requirements of the lease in respect of navigational marks during the term of the lease as follows:
- (a) the Minister must give the lessee written notice of intention to vary the conditions of the lease relating to navigational marks (a *notice of intent*);
  - (b) the notice of intent may specify the proposed variation to the conditions of the lease;
  - (c) the Minister must give the lessee written notice of the requirements of the lease for the installation of navigational marks as varied (a *navigational marks variation notice*), specifying the date from which the variation is effective (the *effective date*);
  - (d) the effective date must be no earlier than the date of the notice of intent.
- (7) The lessee must comply with any variation as required by the Minister in accordance with subclause (6).
- (8) The Minister may amend this clause by Gazette notice.
- (9) In this clause—
- combined lease shape***—if 2 or more adjacent leased areas are within 50 m of each other, the outer boundaries of the combined shape of those leased areas and any further adjacent leased area within 50 m of 1 of those leased areas form a ***combined lease shape*** (and such a lease shape will be taken to include a gap in between any 2 leased areas);

***intertidal navigational mark*** means a post that—

- (a) is yellow; and
- (b) extends 900 mm above mean high water; and
- (c) has a St Andrew's Cross as a top mark; and
- (d) is marked with the number of the lease for which it is a navigational mark in 70 mm high text;

***St Andrew's Cross*** means a St Andrew's Cross that—

- (a) is yellow; and
- (b) has cross arms measuring 900 mm long and 75 mm wide; and
- (c) has the ends of the cross arms marked with—
  - (i) 200 mm yellow retro-reflective tape; or
  - (ii) 75 mm yellow retro-reflective discs;

***subtidal navigational mark*** means a spar buoy that—

- (a) is yellow; and
- (b) has a top mark of a St Andrew's Cross attached to a post at least 900 mm above the buoy; and
- (c) is marked with lights being yellow in colour and flashing once every 4 seconds and visible over an arc of 360° for a distance of two nautical miles; and
- (d) is marked with radar reflectors that meet—
  - (i) *International Standard ISO 8729-1:2010—Ships and marine technology—Marine radar reflectors—Part 1: Passive type*; or
  - (ii) *International Standard ISO 8729-2:2009—Ships and marine technology—Marine radar reflectors—Part 2: Active type*; and
- (e) is marked with the number of each corresponding licence for the lease for which it is a navigational mark.

## 26—Marking-off requirements

If there is to be a marked-off area in a leased area, the boundaries of the marked-off area must be indicated—

- (a) by 1 or more signs that—
  - (i) are no larger than 700 mm by 400 mm; and
  - (ii) contain the words: “Marked off area, no trespass”; and
  - (iii) are each attached to a post to which a St Andrew's cross is also affixed; or
- (b) as specified in the lease.

**27—Rehabilitation of leased area**

- (1) The lessee must, at the lessee's cost in all things and to the reasonable satisfaction of the Minister, rehabilitate the leased area as follows:
  - (a) if the lessee does not apply for renewal of the lease—immediately before the expiry of the term of the lease;
  - (b) if the lease is surrendered before the expiry of the term of the lease—immediately before the surrender of the lease;
  - (c) if an application for renewal of the lease is refused—within 90 days of the date of the notice of refusal of the application or the expiry of the term, whichever is the later;
  - (d) if the lease is cancelled—within 90 days of date of the notice of cancellation;
  - (e) if a variation of the lease consists of or involves the substitution of the coordinates of the area leased through a reduction in the area leased or movement of the area leased (but not including a subdivision or amalgamation of the area leased)—within 90 days of the variation.
- (2) In order to rehabilitate the leased area pursuant to subclause (1), the lessee must:
  - (a) remove and carry away from the leased area all farmed aquatic organisms, aquaculture equipment, and other improvements, plant, goods and property located or brought upon the leased area by or on behalf of the lessee and in doing so cause as little damage to the leased area as practicable; and
  - (b) upon completion of such removal required by paragraph (a), removed all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and
  - (c) reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of aquaculture or otherwise in the leased area to the condition existing before the commencement of the lease.

**28—Wild caught southern bluefin tuna—use of leased area**

- (1) This clause applies to the lease if a corresponding licence authorises the farming of southern bluefin tuna (wild caught) (*Thunnus maccoyii*).
- (2) The Minister may, if satisfied that the leased area is at any time not fully utilised, reduce the size of the leased area as the Minister sees fit and such reduction may, as the Minister considers appropriate, be for a specified period or for the remainder of the term of the lease.
- (3) Without limiting the matters that the Minister may take into account in determining whether the leased area is not fully utilised for the purposes of subclause (2), the Minister may have regard to—
  - (a) whether the leased area is larger than the area reasonably required to carry on the aquaculture operations of the lessee;
  - (b) the performance criteria specified in a schedule to the lease; and

- (c) whether the lessee holds sufficient statutory fishing rights under the *Fisheries Management Act 1991* of the Commonwealth in respect of the Southern Bluefin Tuna fishery required to meet the performance criteria specified in a schedule to the lease.

**29—Wild caught southern bluefin tuna—access to southern bluefin tuna**

- (1) This clause applies to the lease if a corresponding licence authorises the farming of southern bluefin tuna (wild caught) (*Thunnus maccoyii*).
- (2) The lessee must at all times maintain access to statutory fishing rights under the *Fisheries Management Act 1991* of the Commonwealth in respect of the Southern Bluefin Tuna fishery equivalent to a minimum of 60 t (or other amount specified by the Minister by Gazette notice) of southern bluefin tuna (*Thunnus maccoyii*).
- (3) The lessee must, within 30 days of a requirement of the Minister by notice in writing, provide to the Minister evidence of the lessee's compliance with subclause (2).
- (4) The Minister may amend this clause by Gazette notice.

**30—Survival of conditions**

Clauses 22, 23, 24 and 25 survive lease expiry, cancellation, surrender, or substitution of the coordinates of the leased area through a reduction in the leased area or movement of the leased area, but not including a subdivision or amalgamation of the leased area.

**Part 3—Standard licence conditions****Division 1—Provisions applying in respect of all aquaculture licences****31—Interpretation**

- (1) In this Part and in the licence, unless the contrary intention appears:

*Act* means the *Aquaculture Act 2001*;

*land-based aquaculture licence* means an aquaculture licence under Part 7 of the Act;

*licensed site* means the location at which the licence authorises aquaculture operations;

*licensed species*, in respect of an aquaculture licence, means a species of aquatic organism authorised to be farmed under the licence;

*licence specific condition* means a condition of the licence that is not a standard condition;

*marine-based aquaculture licence* means a licence that is a corresponding licence under Part 6 of the Act;

*Minister* means the Minister to whom administration of the Act is committed;

*Regulations* means the *Aquaculture Regulations 2016*;

*standard condition* means a condition of the licence provided for in this Part.

**Aquaculture (Standard Lease and Licence Conditions) Policy 2019**

## Part 3—Standard licence conditions

Division 1—Provisions applying in respect of all aquaculture licences

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- (2) Unless the contrary intention appears, terms used in the licence that are defined in the Act, the Regulations or an aquaculture policy have the respective meanings assigned to those terms by the Act, the Regulations or other policy (as the case requires).
- (3) Every word in the singular number will be construed as including the plural number, every word in the plural number will be construed as including the singular number and every word implying a particular gender will be construed as including every other gender.
- (4) Where two or more persons are included in the designation *the licensee*, the obligations on the part of the licensee contained in the licence will bind such persons and any two or greater number of them jointly and each of them severally and the expression *the licensee* will include all or any one or more of such persons.
- (5) References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- (6) Headings are for convenience of reference only and shall not affect the construction or interpretation of the licence.
- (7) Each word, phrase, sentence, paragraph and clause of the licence is severable. If a court determines that a part of the licence is unenforceable, invalid or void that court may sever that part. Severance of a part of the licence will not affect any other part of the licence.
- (8) Where a word, phrase, sentence, paragraph, clause or other provision of the licence would otherwise be unenforceable, invalid or void, the effect of that provision shall so far as possible be limited and read down so that it is not unenforceable, invalid or void.

**32—Notice to Minister**

- (1) If the licensee is required to give notice in writing, submit or furnish a report, provide a periodic return, or provide or produce any other documents, records or information to the Minister, such notice, report, periodic return, record, document or information may be sent—
  - (a) by post to PIRSA Fisheries and Aquaculture, GPO Box 1625, Adelaide SA 5001; or
  - (b) by email to PIRSA.Aquaculture@sa.gov.au; or
  - (c) by facsimile transmission to (08) 8204 1388 or
  - (d) to such other postal or email address or facsimile number as notified by the Minister to the licensee in writing.
- (2) If the licensee is required to notify the Minister of a matter by telephone call—
  - (a) in the case of a notification under regulation 26 or 27 or clause 35 or 46—the licensee must notify the Minister by calling 1800 065 522 or such other number as notified by the Minister to the licensee in writing; and
  - (b) in any other case—the licensee must notify the Minister by telephone call to (08) 8226 0900, or such other number as notified by the Minister to the licensee in writing.

- (3) Notice given or sent to, or served on, one of the natural persons or bodies corporate comprising the licensee will be taken to be notice to all persons comprising the licensee.
- (4) The Minister may amend this clause by Gazette notice.

## **Division 2—Provisions applying to marine-based aquaculture licences**

### **33—Preliminary**

This Division applies to the licence if it is a marine-based aquaculture licence.

### **34—Escape and interaction prevention**

If—

- (a) there is not a sector-based aquaculture strategy applying to a licensee; and
- (b) an individual aquaculture strategy for the licensee has not been approved by the Minister,

the licensee must, in the course of aquaculture carried on under the licence, take all reasonable and practical measures to prevent—

- (c) the escape of the licensed species; and
- (d) adverse impacts on, and adverse interactions with, seabirds and large marine vertebrates.

### **35—Notification to Minister of damage, degradation and risks arising due to aquaculture activity**

The licensee must, on becoming aware of any of the following matters (whether in the licensed site or outside it) occurring or being likely to occur due to aquaculture activity under the licence, immediately notify the Minister by telephone call and also within 2 days by notice in writing:

- (a) damage or degradation to the seabed or the marine or coastal environment;
- (b) a material risk to navigational safety.

### **36—Degradation or damage to the seabed, marine or coastal environment**

- (1) If the licensee has engaged, or is engaging, in any activity which in the opinion of the Minister has caused, is causing or is likely to cause an unacceptable level of degradation or damage to coastal land or the surrounding marine environment, the Minister may, by notice in writing, direct the licensee to cease engaging in the activity and to refrain from further engaging in the activity.
- (2) The licensee must comply with a direction of the Minister under subclause (1).

### **37—Maximum biomass—finfish (other than wild caught southern bluefin tuna)**

- (1) This clause applies to the licence if it authorises the farming of finfish (other than wild caught southern bluefin tuna (*Thunnus maccoyii*)).

**Aquaculture (Standard Lease and Licence Conditions) Policy 2019**

## Part 3—Standard licence conditions

Division 2—Provisions applying to marine-based aquaculture licences

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- (2) Subject to any licence specific condition providing otherwise, the licensee must ensure that the maximum biomass of finfish on the licensed site does not exceed 15 t per licensed hectare.
- (3) The Minister may amend this clause by Gazette notice.

**38—Maximum biomass—wild caught southern bluefin tuna**

- (1) This clause applies to the licence if it authorises the farming of wild caught southern bluefin tuna (*Thunnus maccoyii*).
- (2) This clause applies subject to a licence specific condition.
- (3) The licensee must ensure that the maximum biomass of wild caught southern bluefin tuna on the licensed site does not exceed 6 t per licensed hectare.
- (4) The Minister may amend this clause by Gazette notice.

**39—Maximum biomass—mussel**

- (1) This clause applies to the licence if it authorises the farming of mussel species.
- (2) This clause applies subject to a licence specific condition.
- (3) The licensee must ensure that—
  - (a) the total length of backbone on the licensed site does not exceed 560 m per hectare; and
  - (b) no more than 15 m of longline, for each metre of backbone, is submerged.
- (4) The Minister may amend this clause by Gazette notice.

**40—Maximum biomass—oyster**

- (1) This clause applies to the licence if it authorises the farming of oyster species using contained longlines or contained racks or both.
- (2) This clause applies subject to a licence specific condition.
- (3) If the licence authorises the farming of oyster species using contained longlines, the licensee must ensure that—
  - (a) in the case of farming oyster species in the Haslam (north bank) aquaculture zone—
    - (i) contained longline does not exceed 4 km per hectare; and
    - (ii) stocked contained longline does not exceed 3 km per hectare; and
  - (b) in the case of farming oyster species in an area within an aquaculture zone identified in the *Aquaculture (Zones—Coffin Bay) Policy 2008*—contained longline does not exceed 4 km per hectare; and
  - (c) in the case of farming oyster species in an area within the harbor boundary of Cowell (Franklin Harbor) (as defined in Schedule 3 of the *Harbors and Navigation Regulations 2009*)—
    - (i) contained longline does not exceed 4 km per hectare; and
    - (ii) stocked contained longline does not exceed 3 km per hectare; and

- (d) in the case of the farming of oyster species in any other area—contained longline does not exceed 3 km per hectare.
- (4) If the licence authorises the farming of oyster species using contained racks, the licensee must ensure that railing to which contained racks are attached does not exceed 1 km per hectare.
- (5) If the licence authorises the farming of oyster species using both contained longlines and contained racks, the addition of—
  - (a) the length of contained longline used expressed as a percentage of the relevant limit of contained longline permitted under subclause (3); and
  - (b) the length of contained racks used expressed as a percentage of the relevant limit of contained longline permitted under subclause (4),must at all times be equal to or less than 100.
- (6) The licensee must ensure that all baskets or contained racks used to hold aquaculture stock on a contained longline or railing—
  - (a) are not hung below other baskets or contained racks; and
  - (b) do not overlap with other baskets or contained racks hung on the same longline or railing; and
  - (c) in the case of baskets, are not hung perpendicular between 2 separate longlines.
- (7) The Minister may amend this clause by Gazette notice.

**41—Oyster farming—securing baskets**

- (1) This clause applies to the licence if it authorises the farming of oyster species.
- (2) Subject to subclause (3), the licensee must not use any device other than hard plastic clips to secure oyster baskets.
- (3) The Minister may, by notice in writing, authorise a licensee to use a device other than hard plastic clips to secure oyster baskets.

**42—Mollusc farming—farming structures**

- (1) This clause applies to the licence if it authorises the farming of molluscs (other than mussel species).
- (2) The Minister may by written notice to a licensee, specify the form and dimensions of farming structures which must be used to contain molluscs.

**43—Signage**

- (1) This clause applies to the licence if it is specified in a schedule to the licence as intertidal.
- (2) If—
  - (a) farming structures are present on the licensed site; and
  - (b) the licence boundary and an adjacent licence boundary are within 50 m of each other,

**Aquaculture (Standard Lease and Licence Conditions) Policy 2019**

## Part 3—Standard licence conditions

Division 2—Provisions applying to marine-based aquaculture licences

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the licensee must install a post complying with subclause (3) within the licensed site marking the beginning of the farming structures closest to each corner of the adjacent licence boundary that is within 50 m of the licence boundary.

- (3) For the purposes of this clause a post must—
  - (a) extend 500 mm above mean high water; and
  - (b) be a colour other than yellow, green or red; and
  - (c) have a white coloured sign (being a sign 500 mm long, 75 mm wide, and marked with the licence number in 70 mm high black coloured text) attached to the top facing perpendicular to the direction of the farming infrastructure it is attached to and towards the opposite boundary of the licensed site.
- (4) The Minister may amend this clause by Gazette notice.

**Division 3—Provisions applying to land-based aquaculture licences****44—Preliminary**

This Division applies to the licence if it is a land-based aquaculture licence.

**45—Land-based category A licence—discharge of wastewater**

- (1) This clause applies to the licence if it is classified by the Minister as a category A licence under the regulations.
- (2) The licensee must not discharge or pump wastewater—
  - (a) off the licensed site; or
  - (b) into State waters.

**46—Escape prevention and reporting**

- (1) The licensee must, in the course of aquaculture undertaken under the licence, take all reasonable and practical measures to prevent the escape of the licensed species.
- (2) In the event of the escape of a licensed species, the licensee must immediately notify the Minister by telephone of the escape.