Not Relevant

704 REPORT ON OPERATION OF AQUACULTURE ACT 2001 (Rory McEwen) - NOTED

704

MINUTES forming ENCLOSURE to *DMI 07/0751*

TO: THE PREMIER FOR CABINET TO NOTE

RE: REPORT ON OPERATION OF *AQUACULTURE ACT 2001*

1. PROPOSAL

1.1 For Cabinet to note that a report has been prepared pursuant to Section 92 of the *Aquaculture Act 2001* (the Act), which requires a report be prepared on the operation of the Act, as follows:

The Minister must, within 5 years after the commencement of this Act or any provision of this Act-
(a) cause a report to be prepared on the operation of this Act; and
(b) cause a copy of the report to be laid before each House of Parliament.

2. BACKGROUND

2.1 In a move to modernise the legislation managing aquaculture, State Cabinet in December 1999 approved action to prepare an Aquaculture Bill to rectify the shortcomings of the *Fisheries Act 1982* in relation to aquaculture activities. Following extensive government, industry and community consultation a Discussion Paper was released in August 2000, which set out a number of legislative options.

2.2 The Act was developed to comprehensively address resource and environmental management responsibilities associated with the aquaculture industry. This objective has been achieved through the introduction of an integrated licensing system and resource management framework with close linkages to the Environment Protection Authority.

2.3 The Act was assented to on 6 December 2001 and came into operation on 1 July 2002, with exception of Sections 49 and 50 and Part 10 Division, which came into operation on 11 November 2002.

3. DISCUSSION

3.1 Since the inception of the Act, it has been widely recognised as a framework providing industry and other stakeholders with confidence, transparency and certainty with respect to aquaculture zoning, assessment and ongoing management.

3.2 A key objective of the Act is to ensure the ecologically sustainable development of the aquaculture industry. However, the objective of ecologically sustainable development of the aquaculture industry is meaningless without the appropriate management tools.

3.3 The ecologically sustainable development of the aquaculture industry is achieved by implementing an adaptive management regime. PIRSA Aquaculture utilises provisions of the Act to develop policies, plans, licence conditions and regulations, all of which form the framework required to ensure ecological sustainability.

3.4 The Report on the operation of the Act provides an opportunity for review of the regulatory regime and it is intended that it will prompt consideration of an Amendment Bill to be subsequently presented to Cabinet. The overriding concern in this regard is to ensure the Act remains relevant and responsive for the management of an industry that still has significant potential for growth and adoption of new technologies.

4. RECOMMENDATIONS

It is recommended that Cabinet:

4.1 Note the attached Report on the Operation of the *Aquaculture Act 2001* and approve this Report to be tabled before each House of Parliament.

4.2 Approve this document as a document to which access may be given under the *Freedom of Information Act 1991*.

Hon Rory McEwen MP
MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR FORESTS

Date: 26 JUN 2007

RECEIVED
29 JUN 2007
CABINET OFFICE

In Cabinet

- 2 JUL 2007

NOTED
PREMIER

CERTIFIED as a document approved by Cabinet on 2/7/07 as a document to which access may be given under the Freedom of Information Act 1991

Signature of Minister .....

Portfolio PREMIER

Report on the Operation of the Aquaculture Act 2001

Prepared by
Department of Primary Industries and Resources South Australia
Aquaculture Division

June 07

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Introduction

In a move to modernise the legislation managing aquaculture, State Cabinet in December 1999 approved action to prepare an Aquaculture Bill to rectify the shortcomings of the *Fisheries Act 1982* in relation to aquaculture activities.

Following extensive government, industry and community consultation a Discussion Paper was released in August 2000, setting out a number of legislative options.

The Act was developed to comprehensively address resource and environmental management responsibilities associated with the aquaculture industry. This objective has been achieved through the introduction of an integrated licensing system and resource management framework with close linkages with the Environment Protection Authority.

The *Aquaculture Act 2001* (the Act) was assented to on 6 December 2001 and came into operation on 1 July 2002, with the exception of sections 49 and 50 and Part 10 Division 4, which came into operation on 11 November 2002.

Section 92 of the Act requires a report be prepared on the operation of the Act, as follows:

Review of Act

92. The Minister must, within 5 years after the commencement of this Act or any provision of this Act-

(a) cause a report to be prepared on the operation of this Act; and

(b) cause a copy of the report to be laid before each House of Parliament.

While this report provides some commentary on the performance of the Act to date, it does not make specific recommendations about potential amendments. A proposal will be put to Cabinet and if any changes are required these will be the subject of an Amendment Bill for which formal intra- and interagency, industry and public consultation will be undertaken.

The administering agency for the Act is the Department of Primary Industries and Resources South Australia (PIRSA).

Aquaculture in South Australia

Innovation and creativity based on an exchange of expertise and cooperation between industry, aquaculture organisations, research institutions and the public sector have been the hallmarks of the aquaculture industry throughout its development in South Australia. These qualities go a long way towards explaining the success of the industry.

Indications are that there is a great potential for further growth, not only in more established sectors such as tuna and oyster farming, but also in marine finfish, shellfish, biotechnology and land-based aquaculture. South Australia's aquaculture industry is the most diverse in Australia in terms of the range of species farmed in marine, coastal and inland facilities.

The total economic impact (direct and flow-on) of aquaculture in South Australia in 2005/06 was $550 million. Direct employment was estimated to be in excess of 1,800 full time equivalent positions (FTE) in 2005/06 with 1,540 flow-on jobs, giving total employment of 3,348 FTE, with around 75% of these jobs generated in regional South Australia.

The presence of a large industry such as aquaculture and associated enterprises has considerable effects on the character of the regional communities in which it is embedded. Associated enterprises may include spat or fingerling production/supply, feed manufacture/supply and enterprises associated with other material inputs, labour, energy and services. Much of the expenditure goes directly into the local community.

Importantly, from a State perspective, this relatively new and developing industry is greatly assisting economic and regional development through:

- Development of export products and markets for South Australia;
- Support for other regional industries benefiting from aquaculture developments including processing, transport, tourism and other related services;
- New youth employment and training opportunities as a high proportion of people employed in aquaculture are less than 30 years old;
- Injection of incomes and jobs into the regions of South Australia;
- Diversified training and employment opportunities in all aspects of the industry from research and development through to farming, value adding, management and marketing; and
- Opportunities for indigenous communities

An economic analysis report on the impact of aquaculture activity in South Australia for 2005/06, recently released by the Minister for Agriculture Food and Fisheries, indicates continued growth in a number of aquaculture sectors.

The report is commissioned by PIRSA's Aquaculture Division each financial year and identifies the economic benefits to the State from the aquaculture industry and associated services.

Importantly, this was the first year industry were asked to estimate production for the next three years. This information has confirmed substantial growth is expected in a number of sectors, particularly marine finfish, abalone and mussels, with solid growth being predicted by the oyster industry and several other sectors.

Regulatory environment for aquaculture

Since the Act's inception, it has been widely recognised as a framework that provides industry and other stakeholders with confidence, transparency and certainty in respect of aquaculture zoning, assessment and ongoing management.

Currently there are 1075 authorisations issued under the *Aquaculture Act 2001,* covering subtidal, intertidal leases and licences. Of this total there are 185 landbased aquaculture licences and 445 corresponding licences (marine licences).

Prior to the introduction of the *Aquaculture Act 2001* there were 464 landbased licences and 306 marine based licences. There has been a significant reduction in the number of landbased licences since the introduction of the Act. This is largely due to the fact that under the *Fisheries Act 1982* landbased aquaculture operators only needed a one-off permit and many decided their activities did not fit within the definition of aquaculture contained within the Act (mainly as they related to trade, business or research).

The growth in licence numbers has been predominately in the marine aquaculture sectors.

A key objective of the Act is to ensure the ecologically sustainable development of the aquaculture industry. This objective is being met through an adaptive management regime implemented under the Act's provisions to develop policies, plans, licence conditions and regulations, which together form the framework required to ensure ecological sustainability.

Applications for new marine aquaculture licences, outside of an aquaculture zone require a preliminary assessment to determine the suitability of the proposed activity for a particular area. For example in the first three years of operation of the Act, only 61 of 128 expressions of interest progressed through to a full environmental assessment.

Currently all licence applications are assessed using the National Ecologically Sustainable Development Framework for Aquaculture.

The Framework was developed by the Fisheries Research and Development Corporation (FRDC) and is used consistently across fisheries and aquaculture sectors in Australia. The Framework is based on the Australia and New Zealand standard for risk management.

In February 2004, the Australian Government Productivity Commission (PC) published a research paper titled 'Assessing Environmental Regulatory Arrangements for Aquaculture', which examined regulatory arrangements for aquaculture in all States of Australia.

Throughout the PC report the efficiencies of dedicated aquaculture legislation were emphasised, with South Australia remaining the only State in Australia with such legislation.

The other key areas where South Australia was cited as having particular benefits or leading the other States included:

- Recognition of South Australia as one of only two States having a statutory based marine planning regime;

- PC support for the approach taken by South Australia with regard to marine aquaculture planning and zoning;
- Recognition of the importance of marine aquaculture lease tenure as being a critical part of future industry development – the approach adopted by South Australia to ensure security for the industry's development; and
- Recognition of the need to streamline licensing and leasing processes, with recommendations for a single licensing system – this is a fundamental objective of the *Aquaculture Act 2001*, integrating EPA approval into one licence issued by PIRSA Aquaculture.

The PC went on to say there is potential for greater use of innovative policy instruments to complement (or in some cases replace) existing regulatory and administrative controls. South Australia's 'Innovative Solutions for Aquaculture Planning and Management' suite of projects, being conducted by PIRSA in conjunction with the Fisheries Research and Development Corporation (FRDC) will provide valuable information on which to base decisions about future management controls to underpin the future growth and development of marine based aquaculture.

Following completion of the Productivity Commission Research Paper, it was evident to the Aquaculture Committee advising the Prunary Industries Ministerial Council that arrangements varied widely between jurisdictions, and that this had the potential to stifle industry growth and result in inconsistent decision making on important planning and management issues, particularly those relating to a public resource (in the case of the marine environment).

As a result, a 'Best practice framework of regulatory arrangements for aquaculture in Australia' was modelled on SA's framework and endorsed by all jurisdictions. The paper recommends a planning and management approach dealing with issues ranging from a sound policy and legislative base, zoning in areas appropriate for various classes of aquaculture through to assessment processes that provide consistency and transparency in decision making, all of which are consistent with the resource management framework provided foe, and established, under the Act.

South Australia's Economic Development Board recommended that a number of environmental assessments be reviewed in South Australia. An Aquaculture Environmental Assessment Working Group supported the recommendations outlined in the PC paper and conducted an analysis of South Australia's processes to identify those areas where South Australia is currently meeting 'best practice' standards and where improvements might be made in the future. An up-to-date version of this analysis is summarised in Appendix 1.

Part 1 – Preliminary

The Aquaculture Act defines key terminology used throughout the Act. Most importantly, aquaculture is defined in the following way:

***aquaculture** means farming of aquatic organisms for the purposes of trade or business or research, but does not include an activity declared by regulation not to be aquaculture*

***farming of aquatic organisms** means an organised rearing process involving propagation or regular stocking or feeding of the organisms or protection of the organisms from predators or other similar intervention in the organisms' natural life cycle*

There are a number of routine ancillary activities undertaken by the aquaculture industry which may not strictly fall within the above interpretations (or may be outside the scope of the Act, or leases or licences issued under the Act), because they occur off an aquaculture lease or licence site, or because they do not involve the rearing of organisms:

(a) Movement of aquaculture equipment containing live aquatic organisms between licenced aquaculture sites in State waters (eg, towing pens of stock between sites);
(b) Transfer of live aquatic organisms to or from the area of an aquaculture licence site in State waters (eg, when introducing, grading or harvesting stock); and
(c) Storage, repair or cleaning of farming equipment (not containing stock) in State waters.

It may be desirable to clarify the proper jurisdiction for the management of these activities through a future amendment to the Act.

It should be noted that the Act allows for certain activities to be declared by regulation *not* to be aquaculture. While PIRSA have not done so to date, there are some circumstances where it may be appropriate to do so.

For example, using the current interpretation of aquaculture, ornamental fishes held for the purposes of business or trade (including pet shops, breeders, importers, etc) could be licensed under the Aquaculture Act, however only a limited number of "ornamental" operators are licence holders. The Australian Fisheries Management Forum (AFMF) convened a working group to develop a consistent approach to the management of ornamental fishes, with the principal purpose of controlling the movement of exotic species. PIRSA Aquaculture had not actively pursued the ornamental sector pending the outcomes of that working group, however a report has now been published, "*A Strategic Approach to the Management of Ornamental Fish in Australia*", and an implementation committee has been formed to oversee the adoption of appropriate aquaculture licensing frameworks. It is likely that an environmental, aquatic animal health and biosecurity risk assessment will be applied that will result in some ornamental trade activities requiring a permit for the keeping of exotic species under the Fisheries Management Act 2007 which will come into operation on 1 September 2007, but not an aquaculture licence by virtue of the negligible level of risk associated with some small scale operations.

With respect to the interpretation of marked-off areas, there has been some confusion as to the purpose of marked off areas. The interpretation appearing in the Act is:

marked-off area *of an aquaculture lease means an area of the lease with boundaries that are marked off or indicated in the manner required under the conditions of the lease or a corresponding licence*

In the past, this has been considered as an area required to be marked for navigational purposes. Marked-off areas actually relate to *'Division 6 – Occupation of marked-off areas'*, which provides a leaseholder with exclusive occupation of the marked-off area of an aquaculture lease. This provision exists to protect the equipment and stock belonging to the aquaculture lease and/or licence holder and prevent interference with the farming activity. Should a lease and/or licence holder not require exclusive access, they may choose not to mark off the area.

Navigational marking is not discussed in the Act, however PIRSA recognises its importance to recreational and commercial users of the State's marine resources and has been working closely with Transport SA to determine the most appropriate authority to prescribe and manage navigational marks for marine aquaculture activities

To this end, recently renewed leases now contain separate conditions relating to marking-off for the purposes of exclusive occupation and navigational safety. Conditions relating to variation of navigational safety marks have been also been inserted to allow navigational safety requirements to be updated in the event of a change of international standards or if current navigational safety marks are found to be inappropriate.

In terms of its geographic scope, State waters are defined in the Act as:

State waters *means waters that are –*

(a) within the limits of the State and vested in the Crown; or

(b) coastal waters of the State under the Coastal Waters (State Powers) Act 1980 of the Commonwealth (as amended from time to time or an Act enacted in substitution for that Act)

The Government of Australia has given some consideration to arrangements for licensing aquaculture in Commonwealth Waters, and whether or not it warranted a Commonwealth Aquaculture Act. It is PIRSA's understanding that the Commonwealth propose to deal with aquaculture under their Fisheries Act, however may seek the support of State authorities to administer aquaculture leases and licences.

Part 2 – Objects of Act

The objects of the Act are:

(a) to promote ecologically sustainable development of marine and inland aquaculture; and
(b) to maximise benefits to the community from the State's aquaculture resources; and
(c) otherwise to ensure the efficient and effective regulation of the aquaculture industry.

The objectives of the Act are still relevant and appropriate to comprehensively address resource and environmental management responsibilities associated with the aquaculture industry.

Part 3 – Efficient administrative practices

The "Best practice framework of regulatory arrangements for aquaculture in Australia" supported the need for efficient administrative practices to promote confidence and investment in the aquaculture industry.

An assessment of South Australia's performance against each of the recommendations in the framework is attached at Appendix 1.

The South Australian Strategic Plan includes three targets relating to the performance of the South Australian public sector, as follows:

Target 1.7 Performance in the public sector – customer and client satisfaction with government services: increase the satisfaction of South Australians with government services by 10% by 2010, maintaining or exceeding that level of satisfaction thereafter.

Target 1.8 Performance in the public sector – government decision-making: become, by 2010, the best-performing jurisdiction in Australia in timeliness and transparency of decisions which impact the business community (and maintain that rating).

Target 1.9 Performance in the public sector – administrative efficiency: increase the ratio of operational to administrative expenditure in state government by 2010, and maintain or better that ratio thereafter.

A number of South Australian operators (and overseas investors) have been cited in media articles indicating the framework for aquaculture in South Australia provides greater certainty and investment confidence than other jurisdictions. In particular, South Australia's aquaculture industry has seen substantial investment from New Zealand, and increasingly corporate investment through managed investment schemes and public companies.

Decision making processes in relation to policy development and location of aquaculture leases are set out in the Act. Internal policies and processes have been developed by PIRSA Aquaculture to ensure consistency in decision making and conformance with the requirements of the Act.

In respect of administrative efficiency, PIRSA Aquaculture is funded by a combination of State appropriated funds and fees recovered from industry for lease and licence administration, as well as specific transaction fees. The negotiation of cost recovery arrangements has required the Division to function in a highly efficient manner, and this can be demonstrated by comparison to other jurisdictions.

Utilising data from the PC's research paper, "Assessing Environmental Regulatory Arrangements for Aquaculture" and information obtained directly from other Australian jurisdictions, PIRSA conducted a analysis of the costs of its aquaculture program in comparison to other jurisdictions using two indicators:

1. Cost of program per permit
2. Cost of program per $1000 of industry production value

At the time, South Australia's program cost per permit was 11% less than the nearest State, and 86% less than the State with the highest cost per permit *.

South Australia's program cost per $1,000 of industry production value was 2% greater than the nearest State, but 90.7% less than the State with the highest cost per $1,000 *.

Since then, PIRSA Aquaculture has not increased operational expenditure.

The Act, including the public register provisions (discussed further at Part 10 Division 5), provides a sound foundation for the achievement of Targets 1.7, 1.8 and 1.9 of the South Australian Strategic Plan.

* *Note: These figures were calculated utilising data available in 2004/05 however current data is not available. The actual costs for each jurisdiction have not been disclosed in this report due to difficulties in direct comparisons of program areas, comparable data, legislative arrangements and the subsequent wish of some States not to have information published.*

To further support the efficient administration of the Act, PIRSA currently has written agreements with three other areas of government:

Environment Protection Authority (EPA)

A number of matters are referred to the EPA under Part 8 of the Act, which are summarised as:

- whether a corresponding licence containing specified conditions should be granted in connection with an application for an aquaculture lease, or a proposed public call for applications for an aquaculture lease;
- whether an aquaculture licence containing specified conditions should be granted on an application (other than an application for a corresponding licence);
- whether a variation should be made to the conditions of an aquaculture licence;
- whether a pilot lease outside an aquaculture zone should be converted to a development lease;
- whether a development lease outside an aquaculture zone should be converted to a production lease.

Until recently, the EPA has also received referrals from relevant planning authorities (either the DAC or Councils), however to avoid duplication and support the objective of efficient and effective regulation of the aquaculture industry, the EPA no longer receives DAC referrals for marine aquaculture applications.

PIRSA Fisheries – Fishwatch

A Memorandum of Administrative Agreement (MAA) exists between the Aquaculture Division and Fisheries Division for the provision of compliance services. Fishwatch monitor the performance of aquaculture operators against the requirements of the Act, Regulations, leases and licences. Through this agreement, the State-wide network of Fishwatch Officers are authorised to carry out inspections, issue expiations and carry out other actions as defined in the Act and regulations.

The service provision is divided into five main categories under the Act:

- Programmed Aquaculture Compliance Inspections
- Reactionary Compliance Inspections
- Aquatic Animal Health
- Emergency Response
- Major Compliance Breaches

In addition, inspections of closures for the South Australian Shellfish Quality Assurance Program continue to be carried out under this MAA even though statutory authority now rests with the *Primary Industries (Food Safety Schemes) Act 2004*.

Department for Environment and Heritage (DEH)

PIRSA and DEH entered into an MAA relating to aquaculture in April 2006 relating to:

- activities administered under the *Aquaculture Act 2001*;
- Schedule 8 referrals under the *Development Regulations 1993*; and
- activities leading to Marine Parks and Marine Plans, including development of relevant legislation.

The following extract from the MAA summarises its intent in respect to Aquaculture Management (Zone) Policies and Marine Parks:

'PIRSA and DEH commit to continue working together to address key priorities from South Australia's Strategic Plan. This particularly applies to the development of proposed Aquaculture Management (Zone) Policies (T1.12) and Marine Parks (T3.5), where it is essential that each are given optimal effect without detriment to the other.'

The agreement also includes referral of individual applications to DEH in order for management issues to be addressed prior to the development assessment phase, where DEH receive formal referrals from the Development Assessment Commission (DAC). In some cases, DEH responses to these referrals recommended conditions on development approval that were more appropriately dealt with through aquaculture licence conditions or regulations.

The agreement is currently being reviewed to ensure its continued relevance and operational efficiency.

Other

In addition to these written agreements, the Act interacts regularly with the *Development Act 1993* administered by Planning SA, the *Harbours and Navigation Act 1993* administered by Transport SA, the *Livestock Act 1997* and the *Fisheries Act 1982* administered by PIRSA in the following way.

Planning SA

In order to place permanent structures in the sea it is necessary to obtain development approval in accordance with the *Development Act 1993*. PIRSA Aquaculture has worked with Planning SA to incorporate aquaculture zone policies into relevant development plans (primarily the Land Not Within A Council Area (Coastal Waters) Development Plan) through the Section 29 provisions of the Development Act. This provides a greater level of certainty to the aquaculture industry, as aquaculture becomes a category one development. It also streamlines the application process through the Development Assessment Commission (DAC).

DAC have taken the view that it will not consider a development application for marine aquaculture unless the Minister has indicated that he is prepared to grant an aquaculture lease. PIRSA Aquaculture therefore completes its licence assessment, including public notice of the application and referrals to various other agencies. The applicant is then advised to apply to DAC for development approval as the application cannot be made by PIRSA on the applicant's behalf. To assist in this process PIRSA forward the ESD assessment and draft licence to DAC. DAC then conduct another round of interagency referrals and – where the application is not considered a complying development – another advertisement is placed seeking public comment.

With respect to landbased aquaculture, PIRSA Aquaculture also advises the applicant to apply to their local planning authority for development approval. In most instances this is the local government authority, however some delays have been experienced where local government (a) may not have the knowledge or capacity to assess applications for aquaculture; (b) aquaculture is not currently a complying development; or (c) some councils have taken the view that aquaculture is intensive animal keeping. PIRSA Aquaculture is keen to work with local government planners to support their assessment of aquaculture related development approvals.

Transport SA

The ownership of the seabed is vested with the Minister for Transport. Section 20 of the Act makes the Minister's power to grant an aquaculture lease subject to the concurrence of the Minister responsible for administration of the *Harbours and Navigation Act 1993*.

PIRSA Aquaculture and Transport SA have established a process for this to occur. This arrangement is effective as Transport SA, on behalf of its Minister, can consider the proposed grant of a lease from the perspective of the "landowner" as well as issues of navigational safety that may arise from the grant of an aquaculture lease.

PIRSA Agriculture and Wine Division

One of the risks involved in aquaculture development is the transfer of disease from wild stock onto farms (in the case of broodstock), between aquaculture facilities or from an aquaculture facility into the wild.

Similarly to other livestock industries, the entry of aquaculture stock into the State is dealt with under the *Livestock Act 1997*. Accordingly, the *Livestock (Restrictions on Entry of Aquaculture Stock) Notice 2005* was prepared and brought into operation on 1 October 2005.

The notice sets out arrangements for tracing aquaculture stock that has been hatchery reared or taken (caught from the wild) within South Australia and outside the State, including health certification and approval processes.

It should be noted that a person does not need to be an aquaculture licence holder to bring aquaculture stock into the State or to move stock within the State. That is, it is possible that a contractor could carry stock for introduction to an aquaculture licence site, however that contractor would need to comply with the terms of the Livestock Notice. The onus is, however, on the aquaculture licence holder not to allow diseased stock to enter or leave an aquaculture licence site without the written consent of the Minister (Aquaculture Regulation 12).

To assist in timely monitoring and response with respect to matters covered by the Livestock Notice, cross authorisations have been arranged for Fishwatch Officers under the Livestock Act.

PIRSA Fisheries Division

In the case of hatchery reared aquaculture stock, an aquaculture licence holder must apply for an exemption under the *Fisheries Act 1982* to collect broodstock (eg abalone, finfish) from the wild. The alternative would be to purchase live stock from a commercial fisher, however this has not been successful in the past due to catching methods and potential stresses or damage caused to the animals.

The reason for managing broodstock collection under the Fisheries Act is particularly important for fisheries managed under a total allowable commercial catch (TACC), as it allows PIRSA Fisheries to monitor the number of stock being taken from a particular stock. Broodstock collection permits set out the number of animals that may be taken and a timeframe and conditions for the collection.

Another area where aquaculture operators are required to obtain authorisations under the Fisheries Act is to recapture escaped stock as the fish, once escaped, are effectively being caught from the wild which may sometimes require the use of commercial fishing gear (nets, etc). While it is in the interests of aquaculture licence holders to contain their stock securely, on occasion events beyond their control may cause fish to escape (predator activity, damage to nets caused by extreme weather or other interference with nets). In these instances it would be preferable that fish are recovered as soon as possible, therefore it would be useful to have gear (nets, etc) on board service vessels and a streamlined approval process for recovery of stock is currently being developed by PIRSA Fisheries.

With a view to determining the most appropriate means of managing certain activities, the Fisheries and Aquaculture Divisions are currently engaged in discussions where there is a lack of clarity about the overlap between the interpretation of fishing and aquaculture, for example:

- where aquatic organisms have settled on aquaculture structures (eg mussels, red algae)
- where aquatic organisms have become contained in an aquaculture structures (finfish in seacages)
- where structures are placed in State waters to promote the settlement of aquatic organisms on a particular site, however those aquatic organisms are not contained in or on an artificial structure (eg cockles)
- holding or purging commercially caught species prior to sale (eg cockles, lobster).

Part 4 – Aquaculture Policies

Division 1 – General

The Act allows for the Minister to make aquaculture policies for any purpose directed towards securing the objects of the Act.

Aquaculture Management (Zone) Policies have proven beneficial in promoting the orderly and efficient development of the aquaculture industry and in recognising the industry as a legitimate user of the State's marine resources. In addition, aquaculture zones have been negotiated so as to provide increased certainty for the aquaculture industry as well as commercial and recreational resource users.

Generally the procedures for making policies as outlined in Section 12 of the Act has worked well and the referral of policies to various agencies and stakeholder groups allows for an inclusive and transparent process.

Importantly, the earlier recommendation to extend the interpretation of aquaculture to include ancillary activities would provide an even greater level of confidence that a broader range of in-sea activity associated with aquaculture is occurring in appropriate areas that do not interfere with the amenity of other resource users.

PIRSA has commissioned significant scientific research and data collection to identify potential zones for aquaculture development. This has proven to be a major advantage in South Australia and the potential exists for that research to also inform other government decision making (eg, sea lion behaviour, benthic habitats, disease and parasite interactions between wild and farmed fish). Continued investment in this area will be one of the key factors in facilitating a robust and sustainable aquaculture industry in South Australia.

Until recently aquaculture policies were prepared by PIRSA however, given that policies made under the Act effectively form subordinate legislation, Parliamentary Counsel now draft new policies and review existing policies utilising drafting instructions prepared by PIRSA Aquaculture.

A thorough review of all aquaculture policies introduced under the Act has been undertaken to ensure they effectively support the Act. This review determined that it would be appropriate for a number of policies to be revoked and substituted with a single policy (an Aquaculture (Prescribed Criteria) Policy) setting out prescribed criteria as contemplated by section 11(2)(e) of the Act to apply to decisions made in relation to the administration and enforcement of the Act.

In preparing an Aquaculture (Prescribed Criteria) Policy, Parliamentary Counsel has recommended the removal of any extraneous material describing provisions of the Act or administrative processes as these are better dealt with in supporting documents that are not legislative in nature.

Current policies include:

- Aquaculture (Eastern Spencer Gulf) Policy 2005
- Aquaculture (Standard Lease Conditions) Policy 2005
- Aquaculture (Zones – Cape D'Estrees) Policy 2006

- Aquaculture (Fitzgerald Bay Aquaculture Management) Amendment Policy 2006
- Aquaculture (Zones – Eastern Spencer Gulf) Amendment Policy 2007 Aquaculture (Zones – Lower Eyre Peninsula) Policy 2007

Policies to be revoked and included in the *Aquaculture (Prescribed Criteria) Policy* include:

- Aquaculture Aquatic Organism Translocation Policy
- Aquaculture Cost Recovery Policy
- Aquaculture Environmental Management Framework Policy
- Aquaculture Leasing and Licensing Policy
- Aquaculture Resource Management Framework and Ecologically Sustainable Development Policy
- Aquaculture Tenure Allocation Policy
- Aquatic Animal Disease Emergency Response Manual
- Aquatic Animal Health Policy
- Mandatory Provisions (General) Policy
- South Australian Shellfish Quality Assurance Program Policy (now superseded by Primary Industry Food Safety Scheme legislation and regulations)

Aquaculture zone policies that have more recently been drafted by Parliamentary Counsel, and are in various stages of development include:

- Aquaculture (Zones – Smoky Bay) Policy 2007
- Aquaculture (Zones – Anxious Bay) Policy 2007
- Aquaculture (Zones – Lower Eyre Peninsula No2) Policy 2007
- Aquaculture (Zones – Coffin Bay) Policy 2007

Aquaculture zone policies that are currently being investigated by PIRSA include:

- Aquaculture (Zones – Port Neill) Policy
- Aquaculture (Zones – Rivoli Bay) Policy

Recent policies have included a 'research allocation' to allow for and encourage research into potential new species or technologies and improved environmental management. Currently research (whether undertaken by industry participants, private or government research providers) can be hindered by commercial demand for sites. Past experience has shown it is not always possible, or indeed appropriate, for researchers to use commercial production sites for research purposes. It is envisaged that research allocations will be limited in time (for the life of the research project).

Section 11(1)(d) of the Act refers to the ability of an aquaculture policy to identify an emergency zone within State waters (an **aquaculture emergency zone**) for emergency relocation of aquaculture operations of a specified class. To date, only one zone policy, namely the Aquaculture (Zones – Smoky Bay) Policy 2007 has introduced provisions for an aquaculture emergency zone. This is discussed in more detail in Division 5 – Emergency Leases, but given that emergencies are generally unexpected and their extent unpredictable, if there is to be a review of the Act, it is proposed to remove the requirement for an emergency lease to be granted in an emergency zone (the emergency zone itself may be affected by the same emergency affecting the aquaculture operation) and instead put in place more responsive arrangements for the granting of emergency leases.

In addition to the policies discussed above, an Aquaculture (Standard Lease Conditions) Policy came into operation in 2005, setting out conditions relating to the variation of lease conditions. Section 25(2)(c) of the Act states:

Form of leases

*(2) The conditions of an aquaculture lease **may** -*

*(c) **provide for variation of the lease or its conditions by the Minister (but not so as to extend the area of the lease or the class of aquaculture that may be carried on in the area)***

The concept of a lease was introduced in the drafting of the original Aquaculture Bill with the objective of providing greater resource and investment security (achieved through terms of leases up to 20 years, rather than one year licences issued under the *Fisheries Act 1982*).

The initial leases did not include variation provisions, however it was considered necessary to introduce lease conditions that allowed for the area of the lease to be substituted with another area (known commonly in the industry as a "movement"). This may become necessary in a number of circumstances:

- Intertidal shellfish (primarily oyster) aquaculture is generally carried out on sandbars. Over extended periods of time these sandbars may move, necessitating the movement of leases to suitable areas.
- As leased area is transferred, operators with more than one lease may wish to move their leases closer together for reasons of operational efficiency.
- Given that the aquaculture industry is still relatively new, advances in research, technology, farming practices or species farmed may warrant the movement of leases to more appropriate locations.

It was accepted practice under the Fisheries Act to move aquaculture licences. The omission of an appropriate variation provision appears to have been an oversight in drafting initial leases. Consistent with Section 11(2)(f) which allows policies to be made prescribing provisions that will be conditions of licences or leases (**standard** conditions), a policy was drafted prescribing conditions for the variation of a lease, thus allowing for the leased area to be varied (with certain limitations).

Division 2 – Contravention of mandatory provisions

To date, there have been no contraventions of mandatory provisions of an aquaculture policy.

Some early aquaculture policies did not specifically name provisions as mandatory provisions and however, doing so would improve the likelihood of success in applying a penalty under this Division of the Act. The issue is currently being addressed through the review of the aquaculture policies, as described in the previous section of this report.

Part 5 – Requirement for licence

This part of the Act makes it an offence to conduct aquaculture except as authorised by an aquaculture licence granted by the Minister.

Matters relating to aquaculture licences are discussed further in Part 7 of this report.

Part 6 – Leases

Division 1 – General

Since the initial drafting of the Act, some new farming systems and practices have emerged which were not originally contemplated, and regulations have been made to accommodate these.

For example, Regulation 28A currently allows for the division of a lease area, where the Minister can substitute a lease with leases of the same kind, and it is proposed that this scheme be elevated to the Act. The division of leases and licences may be desirable in cases where the leaseholder no longer requires the full lease area to carry out their aquaculture activity. It may also be appropriate to divide and transfer a portion of a lease if the leaseholder does not have the capacity to fully develop the site in accordance with the performance criteria contained in the aquaculture lease. Dividing and transferring the unused portion to another party who does have the capacity to develop the site to its full potential supports the object contained at Section (8)(1)(b) of the Act, '*to maximise benefits to the community from the State's aquaculture resources*'.

In addition to the general process for the grant of leases as set out in the Act, PIRSA makes referrals as required by s24HA of the *Native Title Act 1993,* as well as a number of informal referrals to interested parties throughout the lease and licence assessments. PIRSA constantly seek to improve referral processes to reduce red tape for applicants, and the burden for those receiving and commenting on referrals. Advice has been received that s24HA allows for notice to be given of "a class of acts", so one notice can be given in relation to proposed (present and future) grant of leases and licences of a particular class in particular waters. This, in effect, means that where leases and licence are to be granted within a zone, only the first lease and licence needs to be referred under the Native Title Act (provided the size, class of permitted aquaculture or prescribed criteria for the zone did not change).

Where a lease is to be granted through an allocation process approved by the Aquaculture Tenure Allocation Board (ATAB), applications must be made following a public call and in accordance with the process determined by the ATAB. Soon after its establishment, the ATAB approved a range of criteria it would generally take into account when assessing applications for tenure, which include the nature of the proposal; technical and environmental capacity; business capacity; and the regional and social benefits/economic benefits to the State. These criteria are set out on the development lease application form, an excerpt of which is contained at Appendix 2 of this report. Any additional criteria the ATAB might apply to specific areas are contained in information packages that are made available to all potential applicants.

Section 25 describes the form of leases. Aquaculture leases have been prepared to ensure provisions of the leases are appropriate to the aquaculture industry, whilst providing adequate protection of the Minister and Government's interests pertaining to the occupation of aquaculture leases.

Section 25(2)(a) says that the lease may fix the term of the lease (subject to the Act) and provide for its renewal. Existing leases allow for the Minister to issue a new lease upon renewal, incorporating any reviewed conditions. The renewal process, therefore, provides an opportunity for a review of performance against the lease - particularly in relation to the rate

of development – and to negotiate appropriate conditions for the future management of the lease.

Section 25(1) requires an aquaculture lease to specify the class of aquaculture that may be carried on in the area of the lease. 25(2)(c) provides for variation of the lease or its conditions *but not so as to extend the area of the lease or the class of aquaculture that may be carried on in the area.* The class of aquaculture is not included in the interpretation section of the Act, however it has been the view of PIRSA that the lease confers access rights to the site, while the licence authorises the activity carried out on the leased site. If the class of lease was intended to be the species or farming system to be deployed, 25(2)(c) would seem to preclude adding or changing a species or changing a farming system as advances are made in technology. In practice, it was considered that these matters were most appropriately dealt with, and adaptively managed, by the aquaculture licence. It was therefore decided that the class of aquaculture that may be carried out on an aquaculture lease would be defined as 'intertidal aquaculture' and 'subtidal aquaculture'.

Original aquaculture leases drafted by the Crown Solicitor's Office did not contain variation provisions, however given that the Act clearly contemplated the need to vary leases at a future time, an Aquaculture Standard Lease Conditions Policy was made in 2005 setting out terms for the variation of leases. In particular, the Standard Lease Conditions Policy allows for the substitution of lease areas (subject to some limitations) to allow for the practice of moving lease sites. This may occur when conditions change (eg the movement of a sandbar), as operators learn more about their sites (eg to take advantage of a particular tidal movement), technology changes (eg to a deeper water system) or for reasons of operational efficiency (eg clustering sites together).

The principal differences in pilot, development and production leases are summarised in the table below:

Characteristic	Pilot	Development	Production
May be granted outside a zone	Yes	Only via conversion or renewal	Only via conversion
May be granted within a zone	No	Yes	Only via conversion
Transferable	No	With Minister's consent	Prior written notice to Minister
Maximum term	1 year	3 years	20 years
Maximum aggregate term	3 years	9 years	Unlimited

Division 2 – Pilot leases

The principal purpose of a pilot lease is to allow for leases to be granted in areas where the potential for aquaculture has not yet been proven or where there is no zone in place. The 'experimental' nature of a pilot lease is reflected in its maximum term which allows the site to be closely monitored by the Minister, and a determination made as to whether or not the pilot lease should be converted to a development lease. Alternatively, the performance of a pilot lease may provide guidance to PIRSA as to whether the area should be zoned for further aquaculture development, and information collected during site monitoring may help to inform any policy developed in the area. There are currently 15 pilot leases.

Pilot leases cannot be granted in aquaculture zones, although they can exist in an aquaculture zone if a new zone incorporates the area of the pilot lease. Once an aquaculture zone has been established the holder of a pilot lease can apply for conversion to a development lease (at the end of a term of the pilot lease). For further discussion on this, see 'Division 3 – Development leases'.

Section 28 allows pilot leases to be granted within a prospective aquaculture zone. At the time of writing only two prospective zones had been put into place, being the Point Pearce Prospective Aquaculture Zone and the Woods Point Prospective Zone, however, no call has been made for pilot leases in these areas.

Division 3 – Development leases

Development leases have two main purposes. The first is to provide an avenue for holders of pilot leases granted pursuant to Division 2 to continue to develop their site once its potential has been proven. The second is for new leases to be granted in zones, and to have those leases satisfactorily developed prior to converting to production leases. There are currently 41 development leases.

A development lease may only be granted in respect of an area comprising or including State waters within an aquaculture zone. Section 34(8) clarifies that the conversion of a pilot lease to a development lease is not taken to constitute the grant of a lease for the purposes of the Act. Therefore, pilot leases can be converted to development leases whether or not a zone has been put into place over the area of the pilot lease.

Division 4 – Production Leases

A production lease is the longest possible lease available under the Act, with terms of up to 20 years, renewable for successive terms. The purpose of this type of lease is to provide security of tenure to those who have substantially developed their site.

A production lease can only be acquired through the conversion of a development lease, either in or outside a zone. Those holding aquaculture licences under the Fisheries Act were issued production leases under the Aquaculture Act using the transitional provisions set out in the Act, as the entitlements of a production lease most closely resemble those that were available under the Fisheries Act. There are currently 343 production leases of which a significant number were granted using the transitional provisions.

Division 5 – Emergency Leases

Emergency leases are designed to allow for the temporary relocation of an aquaculture lease in the event of an unforeseen event that may threaten the aquaculture operations. To date, it has only been necessary to grant one emergency lease near Arno Bay where unexplained increases in water temperature were thought to be causing death of some stock. The process of granting this emergency lease highlighted a number of shortcomings in the current process described in the Act for the granting of an emergency lease.

An emergency lease can only be granted in an emergency zone, however it is difficult to plan for emergency zones since it is not possible to predict the type of emergency that may occur,

nor the extent of its effects. For example, if an oil spill were to occur, it may not necessarily be confined to the aquaculture zone and may, in fact, affect the area zoned for emergency use.

Where emergency zones have been created, it has been in conjunction with aquaculture zone development, which involves a significant amount of work in terms of research, drafting and consultation. However, not all of the State's waters used for aquaculture have been zoned, so some leases are not within (or within the proximity of) an aquaculture zone or emergency zone. The ability for leases to exist outside zones is quite clearly contemplated by the Act in terms of the ability to grant pilot leases and convert to development and production leases outside zones. This may leave some leases in a position where they are unable to move in the event of emergency.

If an emergency zone were to be created in response to an emergency, it still needs to be developed in accordance with the procedures for making policies set out in s12 of the Act, which could take many months (having regard to the requirement for two months consultation, referrals, the AAC's recommendation to the Minister and gazettal of the policy).

Furthermore, while the Act discusses the process for grant of an emergency lease, there is no discussion on an emergency licence, however Section 24 says that an aquaculture lease cannot be granted unless a decision has been made by the Minister under Part 7 that a corresponding licence will be issued. Under Part 7, Section 50 describes the process for grant of licences, which includes public notice of an application, referral to EPA, etc. The time required to undertake these processes is not in line with the nature of an emergency – as mentioned previously, the referral period for EPA as defined by regulation is up to 6 weeks, plus 2 – 4 weeks public notice could see up to 10 weeks pass before an "emergency" can be responded to if an emergency lease does require a corresponding licence.

Even if it were possible to vary the conditions of an existing licence to allow the licenced activities to be undertaken on an alternative site, that would still require referral to EPA in accordance with S59(1)(c). Presumably, development approval would also be required on the emergency site, which would also require referral processes established by the Development Act.

Accordingly there are grounds for an aquaculture emergency lease does not appear to be exempt from the requirements of referral under the *Native Title Act 1993* (2 months) or concurrence of the Minister for Transport.

It is therefore recommended that an alternative means of granting an emergency lease and licence to be developed, having regard to requirements such as concurrence, referrals, development approval and public notice.

Division 6 – Occupation of marked-off areas

The ability for aquaculture lease holders to have exclusive occupation under an aquaculture lease exists to protect the stock and infrastructure on the site from interference, theft or malicious damage. Given the often significant investment made by aquaculture operators, the penalties can be substantial (imprisonment of up to 2 years).

While the Act allows for exclusive occupation, the provisions only apply in respect of areas of the lease that have been marked off according to conditions of the lease. That is, a

leaseholder may choose to only mark out the area of lease containing infrastructure and/or stock an allow free access to the remaining part of the lease if it is being fallowed or not yet developed.

The Act requires that a person firstly be requested by an authorised officer to leave, and if they fail to leave they may be found to be guilty of an offence. Likewise, if the person re-enters the site, or interferes with stock or equipment, they may be found to be guilty of an offence.

In reality, these provisions have never been utilised by industry. It would appear industry is unsure as to what would constitute 'reasonable excuse' for someone to be on a site, if (and how) an authorised person should collect evidence that may lead to prosecution (given it is unlikely witnesses will be present), and who the offence should be reported to (most offences under the Act are reported to Fishwatch, however it may be more appropriate for this to be reported to the South Australian Police). Additionally, if someone is of the mind to interfere with stock or equipment, it is more likely they will do so when the site is unattended, so an offence would be difficult to prove. Some operators have engaged their own boat patrols in addition to their operational staff in the behef that regular attendance and surveillance of sites will provide a greater deterrent to potential offenders.

Part 7 – Licences

Where an aquaculture lease gives access to a marine resource on which an aquaculture activity can be carried out, an aquaculture licence authorises the actual activity and is required for both marine and inland aquaculture operators. The aquaculture licence is the primary tool for adaptive management of the aquaculture industry, containing conditions relevant to the biomass, farming system and species.

Section 50 sets out a process for the grant of licences. Currently where an aquaculture licence is granted within an aquaculture zone, PIRSA's practice has been to make a public call for applications and, when the applications are received and tenure considered by the ATAB, notices setting out the location of the applications are placed in the *Adelaide Advertiser* and relevant local newspaper. It would appear this practice is in excess of the requirements of Section 50, given that s50(1) and 50(1)(b)(i) gives the Minister the ability to *'decide that a corresponding licence will be granted ... in connection with ... a proposed public call for applications for an aquaculture lease ... if the Minister has caused public notice of the ... proposal to be published'.*

Section 52 allows for the conditions of an aquaculture licence to be varied by the Minister. In terms of adaptive management controls, this allows the licence holder to request/consent to a change in licence condition (for example, a change in licenced species or farming system) to accommodate changes in farming practices, or for the Minister to vary a licence by giving immediate notice to the licence holder to prevent or mitigate significant environmental harm. In any case, the variation must be referred to the EPA under Part 8.

Section 53 allows the grant of inland aquaculture licences for up to ten years, with marine licences being coextensive with the term of the lease. To date, the majority of inland licences have been granted shorter term licences, however PIRSA is currently considering a move to longer term renewals for those licence holders whose licence conditions are considered appropriate for the level of risk presented by the farming operation, and who consistently meet or exceed the standards set by licence conditions and regulations in terms of monitoring, reporting and fee payments. This change would reduce red tape for operators (in terms of annual renewal applications) as well as PIRSA (renewal and generation of annual licences). In any case, annual reporting and payments would still need to be delivered.

Section 50(4) allows the Minister to take into account any offences committed by the applicant (or its directors) against any laws relating to aquaculture, fishing or environment protection in determining whether a person is suitable to be granted an aquaculture licence. While Section 55, which relates to transfer of licences, does not explicitly require the same assessment (saying only that the Minister must consent to a transfer), it has been PIRSA's practice to conduct conviction checks prior to licence transfers. Section 55 does not express the matters the Minister will take into account in deciding whether to consent to a transfer, but in addition to a conviction check, PIRSA has implemented procedures to ensure that all requirements on the licence holder are up to date including fee payments, environmental monitoring and production returns to avoid any subsequent confusion about responsibilities to deliver.

Section 55(2) considers what would happen in the case of the lease and licence holders being different parties, where the licence holder is no longer entitled to occupy the area. Given the value of a lease (and the ultimate responsibility of the leaseholder as the occupant of the lease

area), this section protects the interests of a leaseholder who has made an arrangement with another party to undertake the farming activity. While this section has never been exercised, PIRSA has strongly encouraged parties to such an arrangement to have a legal contract setting out circumstances where a licence holder would not be entitled to occupy the area.

Section 58 gives the Minister the power to require or carry out work where a licencee has failed to take action required by a condition of the licence, or upon termination of a licence. This provides the Minister with an alternative to cancelling the aquaculture licence (refer also Part 5) if the failure to comply with a licence condition does not warrant such severe action. It also gives the Minister an avenue to recover the costs associated with actions such as removing stock and infrastructure following the termination of a licence if the licencee has failed to do so. It has been noted that where a licence holder fails to comply with a regulation and an expiation is issued for that failure, the Minister cannot then rely on s58 to require the work to be carried out.

Part 8 – Reference of matters to EPA

While PIRSA Aquaculture takes its role as a manager of natural resources very seriously, the formal role of the EPA in approving licence conditions has been important in the demonstrating the environmental credentials of the Act.

Section 59(1) sets out the matters that must be referred to the EPA, being:

- whether a corresponding licence containing specified conditions should be granted in connection with an application for an aquaculture lease, or a proposed public call for applications for an aquaculture lease;
- whether an aquaculture licence containing specified conditions should be granted on an application (other than an application for a corresponding licence);
- whether a variation should be made to the conditions of an aquaculture licence;
- whether a pilot lease outside an aquaculture zone should be converted to a development lease;
- whether a development lease outside an aquaculture zone should be converted to a production lease.

The role of the EPA is not simply to make recommendations to the Minister – it must approve licence conditions or the variation of licence conditions. In determining its response, the EPA must have regard to, and seek to further, the objects of the *Environment Protection Act 1993* and its policies, as well as general environmental duty.

While the EPA is generally supportive of the licence conditions developed by PIRSA Aquaculture following PIRSA's comprehensive risk assessment, there have been occasions where the EPA has taken a proactive approach in seeking additional information or negotiating licence conditions, rather than refuse to approve a licence if they do not believe the proposed conditions are adequate.

A six week referral period is defined in regulation for matters contained in this Part and the EPA has met 100% of its statutory obligations, with responses regularly received well before that period. The EPA has also been proactive in working with Planning SA so as not to require referrals previously required by regulations under the Development Act, thus reducing duplication within government.

Part 9 – Appeals

Part **9** deals with the ability of an applicant or licence holder to appeal against a decision of the Minister.

It should be noted that these appeal provisions apply only to the licence and not the lease. However, if the Minister decides not to grant an application for an aquaculture lease, the applicant must be given a written statement of the Minister's reasons for the decision. Additionally, the aquaculture lease requires the Minister to give notice of intent to cancel a lease and provides an opportunity for the lease holder to make remedy the problem, or to provide reason why the lease should not be cancelled.

There has been one appeal against the Minister's decision to cancel a lease and subsequently cancel the corresponding licence. In that case the appeal was dismissed.

Section 60 of the Act allows for the licensee to make an appeal to the Administrative and Disciplinary Division of the District Court.

Third party appeal rights exist under the Development Act where a site falls outside an aquaculture zone. Category 1 development approval status applies to sites within an aquaculture zone. It should be noted the establishment of an aquaculture zone includes public consultation that can be likened to the consultative process required for terrestrial development plan amendments. In addition, an aquaculture policy is subject to Parliamentary scrutiny via the Environment, Resources and Development Committee. If the ERD Committee resolves to object to a policy, copies of the policy must be laid before both Houses of Parliament and if either House passes a resolution disallowing a policy, the policy ceases to have effect.

Part 10 – Administration

Division 1 – Minister

Section 61 provides for the delegation of functions or powers under the Act to a person or body (including a person holding or acting in a specified office or position).

Many of the functions of the Minister have been delegated to the Executive Director, Aquaculture Division in writing to assist in the effective, efficient and timely administration of the Act.

Section 62 allows for the acquisition of land by the Minister in accordance with the *Land Acquisition Act 1969*, however it has never been necessary for the Minister to acquire land for the purposes of the Aquaculture Act.

Division 2 – Aquaculture Advisory Committee

The Aquaculture Advisory Committee (AAC) is one of two statutory bodies prescribed by the *Aquaculture Act 2001.* It's role is to advise the Minister on matters relating to aquaculture and its interaction with the administration of the Act, the policies that govern the administration of the Act and proposals to make regulations under the Act and to make amendments to the Act. The Minister may also assign other functions to the AAC. The AAC is important in ensuring balance and independence in the advice provided to the Minister on these matters.

Prior to the passage of the *Aquaculture Act 2001* through Parliament, an Aquaculture Advisory Committee was assembled to provide advice in the development of the Act, however, this group was not a statutory body and was abolished to make way for the establishment of a statutory committee.

The AAC consists of ten members appointed by the Governor, with membership criteria set out in s65, including:

- A presiding member nominated by the Minister;
- A person engaged in the administration of the Aquaculture Act;
- A person engaged in the administration of the *Environment Protection Act 1993;*
- Four persons with practical knowledge and experience in the aquaculture industry;
- A person with knowledge of, and experience in, research and development relevant to aquaculture;
- A person with practical knowledge of, and experience in, environmental conservation and advocacy;
- A person chosen from a panel of three nominated by the Local Government Association of South Australia.

The Act also requires that at least one member of the AAC be a woman and at least one must be a man. Several members of the AAC, including the chair, are women.

Nominations were called in the categories prescribed by the Act in February 2002, with appointments made in May 2002. While appointments cannot exceed three years, members are eligible for reappointment at the end of their term. Membership was therefore reviewed in

May 2005, with a number of members continuing and the addition of deputy members to some positions.

Members were selected for their ability to provide sound advice to the Government on aquaculture related matters, and to bring any relevant issues to the attention of government. While some sectors and special interest groups have made calls for a wider membership of the AAC to represent particular views, it is PIRSA's view that skills-based membership with a particular emphasis on aquaculture management is most valuable in providing the Minister with advice under the Act, and that the most efficient means of special interests being represented is through policy consultation processes, briefings and representations to the AAC.

The AAC initially met on intervals of approximately six weeks during the implementation of the Act and its initial policies, however as its functions have evolved to primarily provide advice on aquaculture zone policies, meetings are now held at intervals of approximately three months. Amongst other matters, the AAC has provided the Minister with advice on the policies referred to in Part 4 of this report.

Division 3 – Aquaculture Tenure Allocation Board

The Aquaculture Tenure Allocation Board (ATAB) is a statutory body whose role is to advise the Minister on any matter relating to the allocation of tenure for aquaculture and to carry out any other functions assigned to it by the Minister. The ATAB is important in bringing expertise and objectivity to the competitive allocation of tenure within zones. Prior to the Act, and the establishment of the ATAB, aquaculture tenure was allocated on a comparatively ad hoc, 'first come, first served' basis.

The ATAB consists of six members appointed by the Governor, with membership criteria set out in s73, including:

- A presiding member appointed by the Minister
- At least one qualified legal practitioner;
- At least one person with knowledge of, and experience in, business and commerce; and
- At least one person with qualifications and experience in marine biology or environmental management.

The ATAB has also been fortunate in each of its terms to have one member who is a qualified planner.

As is the case with the AAC, the Act requires that at least one member of the ATAB must be a woman and at least one member must be a man. Two members of the ATAB are women.

Nominations were called in the categories prescribed by the Act in March 2002, with appointments made in July 2002 and extended to July 2005. While appointments cannot exceed three years, members are eligible for reappointment at the end of their term. Membership was reviewed in 2005 and appointments were made in September 2005, with a number of members continuing and the addition of deputy members to some positions.

Section 23 states that "*if an aquaculture lease is to be granted through an allocation process approved by ATAB, applications for the lease may only be made following a public call for*

such applications and in accordance with the process so approved". The ATAB's role is also discussed at s28 in relation to allocation processes for pilot lease within prospective aquaculture zones, and s33 in relation to a development lease.

Given the ATAB's role primarily relates to the competitive allocation of tenure within aquaculture zones, the frequency of ATAB meetings is largely dictated by the availability of new lease areas. While the ATAB have made recommendations to the Minister regarding allocation of tenure in Fitzgerald Bay, Lacepede Bay, Arno Bay and Hardwicke Bay, the creation of new zones is a relatively complex process and does not always result in new tenure, so, the ATAB have met relatively infrequently.

Currently the ATAB do not become involved in the development of zone policies, so members do not necessarily have a full background on why certain criteria apply to policies which may assist them when considering applications for tenure. It is proposed that the ATAB should be more closely involved in policy development, so they can consider what criteria should be applied in assessing applications for tenure, having regard to any matters raised during policy development.

Division 4 – Fund

An Aquaculture Resource Management Fund has been established, as set out in this Division.

Section 79(2) states that the Fund must be kept as directed by the Treasurer, which some industry sectors have taken to read that the Treasurer may direct money away from the Fund for purposes other than aquaculture, however it is PIRSA's understanding that s79(2) refers to the financial management standards and audit procedures the Treasurer may require in keeping a Fund of this type.

Regulations have been made to establish that the prescribed fees (other than expiation fees) payable to the Fund and the prescribed penalties recovered in respect of offences against the Act payable to the Fund. Arrangements have been put in place with South Australian Police to direct expiation fees to the Fund.

Division 5 – Public Register

Division 5 requires the Minister to keep a public register containing the following information:

- details of each application for an aquaculture lease, for the conversion of an aquaculture lease from one class to another or for an aquaculture licence; and
- the terms and conditions of each aquaculture lease and aquaculture licence issued under the Act; and
- the names of the lessees and licencees; and
- an accurate description of the area of the lease or licence; and
- details of each environmental monitoring report furnished to the Minister in accordance with aquaculture licence conditions; and
- any other information (other than commercially sensitive information) the Minister considers appropriate to the public register.

As this level of information had not previously been required on a public register, it has taken some time for systems to be developed that can deliver on these requirements.

There has been some debate as to the level of detail required to be kept on the public register, with some suggesting that 'details of each' means *all* details submitted for each application and monitoring report ever submitted since the commencement of the Act. PIRSA has interpreted it to mean specified details of applications and environmental monitoring reports, since the sheer volume of information that would otherwise need to be kept on a register would require a substantial investment in electronic infrastructure and storage capacity and be extremely costly to maintain. Clearly the beneficiary of a public register is the general public (rather than lease and licence holders).

Section 81(3) states that the Minister must ensure that the public register can be inspected at a website determined by the Minister. PIRSA has invested in the development of a Primary Industries Information Management System (PIIMS) that meets many of the Minister's obligations under this Division of the Act, however, there are still some constraints in the amount of material that can be stored and extracted.

Division 6 – Fisheries officers and their powers

As discussed earlier in this report, PIRSA engages Fisheries Officers to undertake certain compliance related activities under the Act.

This Division effectively means that the Act should be read as though it includes Part 3 Division 3 of the *Fisheries Act 1982* relating to the general powers of fisheries officers. This part gives Fisheries Officers the same powers as they currently have under the *Fisheries Act 1982.* This will also be the case when the *Fisheries Management Act 2007* comes into operation, as the *Fisheries Management Act 2007* will amend s82 of the Aquaculture Act. Additionally, Aquaculture Regulation 30 (*Aquaculture Regulations 2005)* extends those powers to regulations.

Part 11 – Miscellaneous

Section 83 requires the preparation of an annual report, which is to be laid before each House of Parliament, which may be incorporated into the annual report of the relevant administrative unit. Information relating to the development of zones and other matters under this Act have therefore been provided for inclusion in PIRSA's annual reporting processes.

The other sections in this Part of the Act are general in nature, and do not warrant specific discussion, with the exception of regulation making powers contained at s91.

Aquaculture Regulations were initially made in 2002 relating mainly to fee structures for certain types of aquaculture licences. These regulations were revoked and replaced by *Aquaculture Regulations in 2005*, which deal with a wider range of matters including but not limited to:

- Waste management
- Use of chemicals
- Disease management and control
- The requirement to keep a stock register
- Marking off
- Escape of stock
- Interaction with seabirds and large marine vertebrates
- Environmental monitoring and reporting
- Fees

These regulations were amended in January 2006 to include additional provisions relating to divisions of leases and licences and to make some exemptions. It is PIRSA's intent to keep regulations under constant review to ensure they continue to be relevant to the management of the developing aquaculture industry.

Appendix 1 Summary of South Australia's performance against 'Best practice framework of regulatory arrangements for aquaculture in Australia'

The recommendations from the Best Practice Framework of Regulatory Arrangements for Aquaculture in Australia are set out below, with commentary on South Australia's performance following each recommendation.

Recommendation 1: Clarify the overall objective and responsibility for aquaculture in each jurisdiction and the inputs/involvement from relevant agencies, recognising the varying legislative arrangements applicable for each jurisdiction (Commonwealth, State and Local government) and the inter-relationship between aquaculture (or fisheries) legislation and other planning and environmental instruments. This may be achieved through consistency of legislative objectives and interpretation (for example, agreed ecologically sustainable development objectives).

South Australia has a dedicated *Aquaculture Act 2001* of which the principal objective is the ecologically sustainable development (ESD) of marine and inland aquaculture. This BSD objective is consistent with the BSD objective adopted across other state legislation.

Although the Aquaculture Act is the primary legislation relating to aquaculture management in South Australia, other legislation affecting aquaculture management includes the *Environment Protection Act 1993, the Coast Protection Act 1972* (or the soon to be *Coastal Act*), *Development Act 1993, Crown Lands Act 1929, Water Resources Act 1997, Natural Resources Management Act 2004* and the *Native Vegetation Act 1991*. Where possible PIRSA Aquaculture has sought to achieve efficiencies when dealing with the other responsible agencies through the policies and administrative processes developed under the Aquaculture Act.

The Aquaculture Act includes provisions setting out the Minister's powers to make aquaculture policies, classes and terms of leases, licence requirements and conditions, establishment of bodies to administer or advise on aspects of the Act and legal authority for associated issues. The Act formally acknowledges the role the Environmental Protection Authority (EPA) plays in the aquaculture application assessment process.

The Act provides for the creation of aquaculture zones and outlines the process, level of consultation and the content, which a zone policy should contain. Zone policies are developed to be consistent with other relevant legislation, which may affect aquaculture management.

Input received from EPA has indicated that the legislative framework in place for aquaculture in South Australia appears satisfactory. The EPA are satisfied with the steady stream of operational and zone policies being developed by PIRSA Aquaculture to systematically address a variety of aquaculture management issues.

Over time, the number of policies (particularly zone policies) will continue to increase which will further contribute to ensuring the sustainable development of the industry, the efficient and effective regulation of the aquaculture industry and achieve greater certainty for industry and new investment in the state's aquaculture industry.

PIRSA Aquaculture is closely involved in discussions with other agencies to ensure integration with Marine Protected Areas (Marine Parks), Marine Plans and Natural Resource Management Plans. In particular, PIRSA Aquaculture and the Department of Environment and Heritage have developed a Memorandum of Administrative Agreement setting out agreed methods of engagement so that both conservation and development objectives are accommodated.

PIRSA has been actively engaging other agencies to ensure aquaculture is suitably recognised and accommodated within and that processes can be put in place to identify potential conflicts of use early in zone policy development and application processes.

PIRSA Aquaculture is also proactive in ensuring consistency with Commonwealth legislation and has recently been actively involved in the consultation for the development of significance guidelines for aquaculture under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). PIRSA Aquaculture is also investigating the possibility of having aquaculture zone policies accredited under the EPBC Act, which would enable applicants within a zone policy area to avoid another potential approval process.

Recommended areas for further opportunities/improvements:

- *PIRSA Aquaculture to continue to develop policies and administrative processes to meet the objectives of the Aquaculture Act, including working across government to identify potential efficiencies in the regulatory framework.*

Recommendation 2: Plan for aquaculture in a proactive and integrated manner, thus providing confidence and clarity to industry, government bodies and the community. As well as the more obvious environmental factors, regional planning should consider the economic, social and resource sharing implications associated with aquaculture.

The greatest proportion of planning considerations, as expected, occur around marine based aquaculture and the desire to establish a suite of aquaculture zone policies. The establishment of aquaculture zone policies under the Aquaculture Act provides confidence for industry while considering the economic, social and resource sharing implications associated with aquaculture.

PIRSA Aquaculture has worked with Planning SA to incorporate aquaculture zone policies into relevant development plans (primarily the Land Not Within A Council Area (Coastal Waters) Development Plan) through the Section 29 provisions of the *Development Act 1993*. This provides a greater level of certainty to the aquaculture industry, as aquaculture becomes a complying development. It also streamlines the application process through the Development Assessment Commission.

With respect to landbased aquaculture, PIRSA Aquaculture have indicated their interest to Planning SA to become more actively involved in the development of planning modules to assist local government achieve consistent planning and management principles in Development Plan Amendments where aquaculture is considered a potential land use.

A planning framework for aquaculture development around the Salt Interception Schemes near the River Murray is being developed with the potential to expand this planning framework to other inland aquaculture zoning. EPA have expressed that they see this as an innovative method of the proper planning for land based aquaculture and ancillary activities.

Input received from Planning SA indicates that they perceive the current planning processes for aquaculture are consistent with the Best Practice Framework. The EPA have identified that due to a number of concerns associated with aquaculture service depots, further consideration should be given to these shore based requirement for aquaculture when considering the establishment of offshore aquaculture zone policies.

Opportunity also exists for PIRSA Aquaculture to streamline the licensing of intake and discharge pipes associated with coastal aquaculture facilities. Input from DEH indicated that they were unclear as to why PIRSA Aquaculture would attempt to achieve this. It is currently necessary for the operator to obtain separate development approvals for the pipes to the rest of the aquaculture facility. The Minister for Agriculture, Food and Fisheries is keen to centralise the approvals for a given activity such as aquaculture. Integrating government agency approvals, to achieve a single approval for the licensing of intake and discharge pipes would enable pipes to be covered by an aquaculture licence. This then becomes an added responsibility to the aquaculture leaseholder as PIRSA Aquaculture would have the ability to control and/or manage impacts on the coastal environment arising from the pipes covered by an aquaculture licence condition.

DEH have also indicated that discharge and water quality issues are best dealt with under the EPA legislation. As previously mentioned aquaculture applications currently go through joint assessment by PIRSA Aquaculture and EPA. Therefore discharge and water quality issues can be managed an aquaculture licence.

PIRSA Aquaculture continues to work with other agencies/departments to understand other relevant approval processes and planning instruments (eg: water allocation, NRM issues with the Department of Water, Land and Biodiversity Conservation (DWLBC)), which may affect aquaculture (particularly land-based). This will enable PIRSA Aquaculture to better integrate this knowledge into its planning for aquaculture development and investigate further possibilities for streamlining of regulatory processes.

Recommended areas for further opportunities/improvements:

- *Better inform coastal councils of shore-based aquaculture infrastructure and servicing requirements resulting from marine aquaculture zoning.*

- *Integrate government agency approvals, to achieve a single approval for the licensing/leasing of land associated with intake and discharge pipes for coastal land-based aquaculture, where they need to run across coastal reserves.*

- *Continue to implement zoning for aquaculture around the salt interception schemes, with the potential to expand this planning framework to further inland aquaculture zoning, which will assist in improving the awareness of local councils to the type of technical information required to achieve fast and effective development approvals and provide a greater level of security to applicants*

- *Continue to work with DWLBC and other agencies to gain a better understanding of relevant approval processes and planning instruments (such as water allocation, NRM plans etc.) and how these may be used to better plan for aquaculture development and streamline regulatory processes.*

- *Continue to develop additional aquaculture zones to achieve greater certainty and investment in the state's aquaculture industry.*

Recommendation 3: Using the range of planning instruments, zone for aquaculture having regard to local characteristics, based on sound scientific data and consistently applied social and economic assessment. Zones may also describe resource allocation principles and development and management controls applicable to specific areas.

The Aquaculture Act provides for the creation of aquaculture zones and outlines the process, level of consultation and the content, which a zone policy should include. Zone policies are developed to be consistent with other relevant legislation, which may affect aquaculture management.

Input received from DEH indicated concerns that some zone policies have been proposed with no technical investigation or in areas, which have insufficient technical information. However, PIRSA has invested significant time and funds in the undertaking a range of technical investigations to assist with identification of appropriate areas for aquaculture activity, including very comprehensive scientific reviews by PPK Environment and Infrastructure and SARDI (2002) and Parsons Brinckerhoff and SARDI (2003). In addition to this all draft zone policies are advertised and public submissions sought. The establishment of aquaculture zones is therefore based on thorough scientific investigation and social and economic assessment to determine the area is suitable for aquaculture, is away from sensitive habitats and compatible with surrounding users. All public submissions are considered in the development of the final zone policy.

In terms of aquaculture zone policies, the EPA considered there was potential for the inclusion of a suite of licence conditions as policies within zone policies to remove the requirement for a large number of conditions to appear on individual licences, which would lead to more rapid assessment of individual licence applications. Parliamentary Counsel have advised against this course of action, instead more comprehensive Aquaculture Regulations were developed to consolidate and provide consistency across a range of issues that had previously been treated as licence conditions.

Additionally, the EPA consider the establishment of emergency zones, in accordance with the Act, would alleviate a number of concerns associated with offshore aquaculture development. While PIRSA Aquaculture considers this a useful suggestion, it is unsure about the value of establishing a 'fixed area' (or areas) as emergency zones, as discussed in the main body of this report on the operation of the Act.

Recommendation 4: Establish a transparent mechanism and criteria to satisfy community expectations in relation to allocation and use of Crown land, marine, freshwater and hyper-saline water resources of which Government is the custodian, whilst providing an attractive and secure investment environment designed to stimulate industry development.

Under the Aquaculture Act, a Tenure Allocation Board was established. Members may be appointed to the board for a period of up to 3 years and are independent of industry and government.

The tenure allocation process is merit based, with criteria for the assessment of applications made available during the call for expressions of interest. These criteria may vary depending on the type of aquaculture considered appropriate in certain areas.

The EPA is supportive of the concept of having an independent assessment of tenure and sees this as a positive function of the Aquaculture Act.

As previously mentioned, PIRSA Aquaculture has worked with Planning SA to incorporate aquaculture zone policies into relevant development plans through the Section 29 provisions of the *Development Act 1993* to ensure a greater level of development certainty for the aquaculture industry. Whilst EPA recognise the efficiencies in this process, they have expressed some concern that removing the community consultation process for individual developments could be viewed as not meeting the desired objective of transparency in the allocation of aquatic resources.

While this is a valid concern, the development and incorporation of zone policies into development plans are required to have a two month public consultation process. In addition to this the Minister is still required to advertise applications or proposals to grant aquaculture licences in accordance with Section 50 of the Aquaculture Act.

There is a need to improve the general public's awareness of the consultation process, which is undertaken to establish a zone policy, and the means by which the public can have input into the development of zone policies.

Recommended areas for future opportunities/improvements:

- *Develop a means of improving public awareness of the consultation process required under the Act, and the means by which the public can provide input in to the development process for zone policies.*

Recommendation 5: Provide a framework for the granting of a lease, preferably a registered lease that provides individuals with the right of access, occupation, security and term of tenure to State owned waters and land.

The Aquaculture Act provides for the granting of four types of aquaculture lease - Development Lease, Production Lease, Pilot Lease and Emergency Lease - to cater for different stages of operational development.

The leasing arrangements under the Act are flexible to foster industry evolution and development. While there have been some discussions with respect to the registration of aquaculture leases under the *Real Property Act 1886,* however for reasons discussed in the main body of this report on the operation of the Aquaculture Act, an alternative is sought that would provide greater flexibility to accommodate industry practices.

Leases (except for Pilot Leases) can also be traded. Development Leases can be traded with the consent of the Minister and Production Leases with written notification to the Minister.

Recommended areas for future opportunities/improvements:

- *Establish a scheme that allows registerable interests to be granted over aquaculture leases, having regard to the practices of the aquaculture industry (eg site movements, etc)*

Recommendation 6: Adopt the nationally recognised aquaculture Ecologically Sustainable Development (BSD) framework for the aquaculture industry and incorporate risk mitigation or management strategies arising from that process into conditions of the aquaculture licence, monitored through reporting by the licence holder. Include sufficient details of any risk assessment and risk ranking undertaken so that it is understandable by the industry and the general public.

ESD risk assessments are undertaken by PIRSA Aquaculture for all new applications. PIRSA Aquaculture has reviewed its ESD Assessment methodology to ensure all components of ESD identified under the nationally recognised aquaculture ESD reporting framework are sufficiently addressed and adequate information is provided to assist the EPA in their application assessments.

PIRSA Aquaculture initiated a Best Practice Application project, with the intention of providing prospective applicants with a guide to the quality and quantity of information required when submitting an aquaculture application. However, soon after the project was due for completion a process review for aquaculture leasing and licensing was undertaken which meant some of the information (particularly its presentation) is not fully up to date. Insufficient discretionary resources have seen this project stalled.

Recommended areas for future opportunities/improvements:

- *Resources be allocated to updating and finalising the Best Practice Application process to ensure information provided by applicants is sufficient to conduct comprehensive risk assessments.*

Recommendation 7: Align aquaculture resource and development approvals with relevant Development Plans, overseen by the appropriate authority.

Both Planning SA and EPA agree that since the inception of the Aquaculture Act there have been improvements in the development assessment process. Input from EPA indicates that the provision of information from PIRSA to assist with development assessment processes has evolved significantly.

To improve the process even further, Planning SA believes there may be an opportunity to investigate joint public notification of licence and development applications, as there appears to be some confusion from third parties. The Development Act provides for clear processes as to which applications are publicly notified and as more zones are developed, there would be fewer requirements for full notification of development applications. PIRSA Aquaculture are currently seeking to streamline the assessment process to encourage licence and development assessment to occur concurrently.

As previously mentioned, PIRSA Aquaculture has worked with Planning SA to incorporate aquaculture zone policies into relevant development plans. This will make aquaculture a category one complying development and remove the right of third party appeal. Proposals outside of a category one area can still be subject to third party appeals through the Development Assessment process.

Recommended areas for future opportunities/improvements:

- *PIRSA Aquaculture to continue to investigate the ability to undertake the licence and development assessment processes concurrently to significantly increase the efficiency of the application process.*

Recommendation 8: Manage aquaculture approvals and ongoing farming activities through an integrated system, incorporating a single point of entry to provide efficient and effective client management and coordination. Apply conditions to address key environmental risks and provide for review mechanisms that enable an adaptive management response.

While the EPA have a formal role in licence assessments and lease conversions, the client manager role is largely undertaken by PIRSA Aquaculture. This concept is currently being extended to a case management approach where nominated officers will see various transactions through from initial contact through to completion to ensure a smooth passage through the various approval and consultation processes.

PIRSA has made a substantial investment in the Primary Industries Information Management System (PIIMS) database to provide a more comprehensive level of electronic data storage and retrieval by PIRSA Officers, as well as a public register component. This database also incorporates financial components that assist in the provision of customer service.

Many conditions relating to environmental management and performance are contained in Aquaculture Regulations, however the Act provides the Minister with the ability to amend a

licence condition by notice in writing to prevent or mitigate significant environmental harm. Environmental performance can be measured through environmental monitoring programs that are applied to all sectors and set out in regulations. The monitoring requirements for each sector vary according to risk.

Recommendation 9: Implement an adequate compliance program to address the relevant risks and ensure licence holders meet lease and licence obligations. Enforce conditions through appropriate legislation and apply penalties commensurate with the nature of the breach.

PIRSA Aquaculture has a memorandum of administrative agreement (MAA) with PIRSA Fisheries Fishwatch program to undertake marine and landbased compliance activities as they have a presence on-ground around the state. The development of aquaculture regulations means that a number of offences can now be expiated.

PIRSA Aquaculture acknowledges that further work is needed to educate Fisheries officers of their powers under the Aquaculture Act and to identify what is and is not a breach. PIRSA Aquaculture propose to develop guidelines for industry and compliance officers in an attempt to rectify this. In addition to this, there is a need to clarify what compliance activities fall under other legislation, and agreement needs to be reached in respect of resourcing those compliance activities falling outside the scope of the Aquaculture Act.

Over the past three years the charge out rate for Fishwatch services has increased substantially, however there has been no off-set in PIRSA Aquaculture's resources which means the number of Fishwatch compliance days have effectively reduced, however the ability to expiate for offences under the regulations has provided a more responsive manner for Fishwatch officers to respond to breaches.

It should be noted, however, that PIRSA Aquaculture consider compliance operations to extend beyond "on water" activities, and has an officer in its Regulatory Services group whose area of responsibility includes ensuring compliance with more administrative actions required under the Aquaculture Act, leases, licences and regulations (such as periodic reporting and ensuring lease and licence holders have appropriate insurance and indemnity arrangements in place).

Recommended areas for further opportunities/improvements:

- *Clarify roles, responsibilities and resourcing for compliance relating to aquaculture activities but falling outside the scope of the Aquaculture Act.*

- *Improve efficiency of compliance operations by developing guidelines for compliance officers and industry to ensure they are aware of their obligations under the Aquaculture Act.*

- *Negotiate sufficient resources for aquaculture compliance activity commensurate with the level of risk.*

Recommendation 10: Facilitate environmental best practice by supporting industry in the development of environmental management systems (EMS) and the realisation of eco-efficiency opportunities.

PIRSA Aquaculture is supportive of the industry representatives who are participating in the national EMS project under the Aquaculture Industry Action Agenda. These members will act as champions to promote the uptake of EMS throughout the industry in South Australia.

Rural Solutions SA has the capacity to further facilitate the extension of environmental best practice in the industry. Rural Solutions are currently working to better engage seafood stakeholders (including aquaculture) in the uptake of EMS.

Input from the EPA mentions the Aquaculture Act requires the placement of monitoring results onto the 'public register', which can be inspected at a web site and that this currently does not occur. This is currently being remedied through enhancement to PIRSA's database system, PIIMS, as mentioned earlier.

Recommended areas for further opportunities/improvements:

- *Identify opportunities for the realisation of eco-efficiency opportunities by continuing to support industry in the development of environmental management systems (EMS).*
- *Improve the transparency of environmental monitoring programs by finalising enhancements to the PIIMS database to make details of environmental monitoring available on the web.*

Appendix 2 – ATAB Evaluation Sheet for Development Lease Applications

The assessment of development lease applications by the Aquaculture Tenure Allocation Board (ATAB) will reflect the principles and policies outlined in the Aquaculture Tenure Allocation Policy and Report.

The Aquaculture Tenure Allocation Policy is available on the PIRSA web site (www.pir.sa.gov.au/aquaculture or by phoning 8226 0314)

Development applications can only be assessed as a result of a public call for applications.

In particular applications will be assessed on the following criteria:

Capability	Description
Nature of the proposal	Has the applicant provided a detailed and clear description of the proposal which includes farming practices and processes? Has the applicant provided a detailed description of the stages of development? Are the stages and timeframes of development sufficient, realistic and achievable? Is the date when full production will be reached achievable and realistic?
Technical and Environmental Capacity	Does the owner and/or operator have sufficient capabilities (skills, knowledge experience) to manage and operate the site Does the owner and/or operator have the capabilities to ensure satisfactory levels of animal husbandry ? Does the applicant demonstrate they will be able to develop and operate the site in a manner that prevents or minimises environmental impacts?
Business capacity	Has the applicant provided a detailed business plan? Has the applicant provided detailed and realistic financial models for the development and ongoing management of the proposal? Has the applicant got access to appropriate markets or has a strategy in place to access those markets? Has the applicant demonstrated ability to meet industry and government standards and regulations? Has the applicant demonstrated that they have the necessary funds available to establish and operate the site in accordance with the development schedule proposed? This should include a letter or Certification of Financial Adequacy from a financial institution.
Regional and social benefits/ Economic benefits to the state	Has the applicant provided information outlining how the proposal will benefit the region? This may include information relating to: – Improvements in infrastructure that enhances the regions overall capability in aquaculture, food production and distribution. – Increases in regional employment brought about through flow-on benefits from fish farming. – Introduction of new aquaculture technology.